

Human Dignity and Moral Rights

Thesis

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For Lyz

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Introduction

"The dignity of the human person? The expression means nothing if it does not signify that by virtue of natural law, the human person has the right to be respected, it is the subject of rights, possesses rights."

Jacques Maritain

This dissertation defends a familiar thesis: the dignity of the human person relates in some fundamental ways to the possession of moral human rights. It does not appeal to a virtuous, dignified life, or to a moral code that each person must live by, for a person to be considered right-worthy or for that matter worthy of human dignity. The truth about having moral rights and being possessed of dignity is compellingly consistent and mutually reinforcing, in that both are accorded to persons simply in virtue of some fundamental quality constitutive to their being human. If references to human dignity are to mean something in moral philosophy, what we think about human dignity must measure up to the argument we find compelling about moral rights.

I try to establish that human dignity plays a dual role in the constitution of moral human rights. I argue that dignity is a moral status of the human person as being the holder of such rights and, at the same time, it is the content of certain rights: some rights can be regarded as immediate instances of this general status, for they directly protect the very moral status that persons have. I take it that rights-claims relating to the protection of persons from degrading and humiliating treatments are more pertinent to respect for the dignity of persons. In other words, the dignity of persons is constituted by these rights for which it serves as their content. There is an interesting quality of the dignitarian content that is aptly manifested in prohibitions against degrading and humiliating treatments; in addition to that, any given moral right can be overlaid by this dignitarian content and thereby conferred additional stringency to its claim. For instance, with

this additional content a right-claim over others' stepping unbidden on one's feet can be given a dignitarian gloss if further facts about the intention of the perpetrator obtain such that if by his act he intends to degrade or humiliate his victim.

The thesis defended here is not very far removed from the mainstream doctrine about human dignity in the human rights discourse, in which appeals to human dignity are often made either to underlie or to repackage specific human rights claims. On the view that I defend in this dissertation, human dignity is tied to moral human rights in slightly distinct ways than what is articulated by the prevailing contemporary conception, according to which human dignity grounds those rights. But my overall thesis functions under a similar theoretical framework that warrants the mainstream view.

This dissertation consists of five chapters, organized in ways that I believe will unveil the logical flow of my argument; to that end, I begin with alternative ways of conceiving human dignity arranged in an ascending order of how pervasive that each one's perceived challenge to my main thesis appears to be. After having traced the implication that the discussion in each chapter has on the rest, I then proceed to refute rival views while dialectically structuring the argument for my overall thesis as I go along with my critique of alternative ways of conceiving human dignity.

Chapter one takes on critics of the mainstream doctrine according to which dignity is in some fundamental sense related to moral rights. In it, I identified three types of challenges to human dignity: the problem of content, the problem of concretization and the justification paradox. In this chapter, after doing justice to these three challenges I then laid down plausible ways of refuting them. Within the problem of content, there is an expansive discussion on what I consider to be the most threatening challenge to the mainstream view of human dignity: it is called the redundancy thesis, which basically claims that the content of human dignity is fully contained in other more familiar concepts such as autonomy or moral rights. Whereas, the problem of concretization states that the notion of dignity is inherently abstract that it is stubbornly unyielding to principled efforts at applying it to concrete moral contexts. That illustrates why appeals to dignity are often made by both sides in a debate about controversial issues in applied ethics. In response, I must say that the observation that dignity may be excessively abstract provides us a further reason to clarify the concept than a reason to give it up. Moving on to the

justification paradox, it must be noted that its challenge is specifically directed at the mainstream conception of dignity as a foundation of rights. Its main claim is that none of the most promising secular conceptions of dignity are suitable candidates for justifying human rights that are attributed to all human beings in virtue of their humanity; but if one wants to defend a dignitarian foundation of human rights, one has to abandon secular conceptions and instead adopt a religious conception of dignity have by all human beings for they are the *Imagio Dei*. Hence the paradox. Since my preferred conception of dignity is not strictly foundationalist, the justification paradox has no bearing on it. Furthermore, I argue that the justification paradox rests on a false dichotomy: clearly, there are secular conceptions that seek to confer dignity to all humans without making appeal to religious authority, or for that matter to any other metaphysical view of the nature of things.

Chapter two discusses the orthodox view that human dignity grounds moral human rights. It explores the thesis that "rights are derived from the inherent dignity of the human person," first by drawing on Jeremy Waldron's analysis of four senses in which one concept can be considered as a foundation for another: foundation could mean historical origin or genealogy, a source of legitimacy, a genuine basis of validity or it could also mean shading indispensable light on another concept.¹ Then, in the more substantive section of this chapter, I put to test each of the four senses against established intuitions about human dignity and thereby determine the most adequate sense in which human dignity may be declared a foundation for moral human rights.

In the first place, when philosophers speak of normative foundations of a concept (such as the concept of rights) they seldom take seriously its genealogy or how it has evolved into the shape and content of its current use. Incidentally, it is not easy to establish whether or not the discourse on human dignity is the precursor to the contemporary discourse about moral human rights. By turning the tables, some have argued that human dignity has gained recent currency due to the coming to prominence of the idea of human rights in post WWII international legal and political discourses. Dignity as a foundation for human rights in the second sense means that it confers legitimacy to the claims human rights have on us. Legitimacy may, in turn, be understood in two

¹ Jeremy Waldron. "Is Dignity the Foundation of Human Rights?" in Rowan Cruft, et.al (eds.) *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015) pp. 117-137

distinct senses: it may mean a source of legal validity in the same sense as Hans Kelsen speaks of *grundnorm* or it may mean moral appeal—precisely in the sense Jürgen Habermas conceives of human dignity.² Thirdly, dignity can be conceived as a foundation in the sense that it justifies human rights claims. Later in this introduction I shall have a few things to say about this sense of foundation, deemed by many, including Waldron, as the most influential conception of human dignity in the human rights discourse. I argue that human dignity cannot be a foundation to moral rights in this most robust sense of a foundation, i.e. as a genuine source of their validity. And fourthly, human dignity maybe said to be foundational to human rights for it illuminates our understanding of the nature and moral significance of rights. While not as directly relevant to the normative underpinning of human rights claims, according to this fourth sense of foundation, dignity could still play a significant role in shedding light on the moral significance of being possessed of rights.

Having established that it is not plausible to think of human dignity as a foundation in the strict sense, i.e., as a source of validity for human rights claims, then in chapter three I will explore a conceptual framework that tries to disentangle dignity from rights while maintaining an important place for both concepts at the normative core of inter-personal morality. It is in this chapter that I consider thought experiments by Joel Feinberg, Michael J Meyer including a reconfiguration of Avishai Margalit's conception of human dignity in the shape of a thought experiment. The upcoming section of this introduction will take up the mantle of reviewing my discussion of the noted thought experiments.

Chapter four and five put forward the defense of my preferred conception of human dignity: human dignity is the moral status for having rights. The fourth chapter delineates the notion of moral status and discerns the adequate sense of moral status in terms of which human dignity can be defined, whereas chapter five considers two contrasting conceptions of human dignity as moral status: conceptions of dignity as inherently valuable status and as high-ranking status. The conception of dignity as inherent value shares uncanny similarities with dignity as rank, despite

² Hans Kelsen. *Pure Theory of Law*, translated by Max Knight (Berkeley: University of California Press, 1967); Jürgen Habermas. "The Concept of Human Dignity and the Realistic Utopia of Human Rights" *Metaphilosophy*, 41:4 (July 2010): 464-480

appearances to the contrary. Nevertheless, all things considered, I believe the latter is the most plausible conception.

Having briefly sketched the chapters in their order of appearance in this dissertation, in this summary I should, however, like to concentrate on the more abstract philosophical discussion of this dissertation: it involves conducting a couple of thought experiments. I am hopeful that starting the summary there will capture the imagination of readers, stimulate their thought, and set the stage for the readers to explore the more trenchant discussion underlying the moral-philosophical discourse on human dignity. I also hope that in so doing I will also encourage readers whose specific interest lies in essential questions of practical philosophy—questions stretching from the meaning of life to "what we owe to each other", including the metaphysical, epistemic and psychological presuppositions of moral thought and action—to studiously engage with the focal point of my exploration on the possible normative relation between the idea of human dignity and that of moral rights.

Three Thought-Experiments

Nowheresville. In a famous thought-experiment, Joel Feinberg (1970) considers a fictitious world the inhabitants of which display compassion, benevolence, sympathy and other moral virtues to a high degree and are often motivated by their duties regarding other persons. However, he imagines them to have no notion of moral rights. By examining *Nowheresville* – this 'virtuous world without rights' –, Feinberg tries to explain the nature and value of rights: What accounts for the distinct and essential role that rights are supposed to play in morality, and how is *Nowheresville* morally different to a 'world with rights'– *Rightsville*? In answering these questions, Feinberg strongly emphasizes that the inhabitants of his imagined world are unable to make claims. If they are treated badly, e.g., they might well request the author of the action to be benevolent or to carry out some duty regarding them; but it does not occur to them that they can claim their due from other persons, or for that matter think that duties are owed to them. According to Feinberg, this activity of claiming is the distinctive feature of having rights: it enables persons to "stand up for themselves, look others in the eye, and to feel in some

fundamental sense the equal of anyone."³ Crucially, he links this idea to the notion of human dignity: "Respect for persons (...) may simply be respect for their rights; and what is called 'human dignity' may simply be the recognizable capacity to assert claims."⁴ Feinberg thus not only embraces his view about the nature and value of rights by reflecting on Nowheresville, but at the same time suggests that the concepts of moral rights and human dignity stand in a relation of mutual dependence. Although it is contested how to understand his position (especially in contrast with a view he seems to defend in his later work), one systematically interesting way to read him is the following: The concept of human dignity is conceptually tied to exercising and respecting moral rights, since it designates the status of beings who are capable of asserting claims. Conversely, the concept of moral rights is conceptually related to human dignity, because rights can only be meaningfully ascribed to beings who are possessed of human dignity, and respect for moral rights requires, first and foremost, that we respect the status of persons with the capacity to assert claims (i.e. their human dignity).

Taking up and expanding upon his thought-experiment, one could say that, according to Feinberg, we can neither imagine a world whose inhabitants have an adequate understanding of human dignity but lack a concept of moral rights; nor can we envisage a world whose inhabitants have an adequate understanding of moral rights but lack the concept of human dignity. In a more general fashion, this view can be characterized by the following two claims about the relationship between human dignity and moral rights: (1) human dignity should be conceptualized within a rights approach; and (2) the concept of human dignity is a distinct and indispensable element of a rights approach to morality.⁵ However, these two general claims extrapolated from Feinberg's thought experiment do not tell us how exactly the relationship between human dignity and moral rights should be understood.

³ Joel Feinberg "The Nature and Value of Rights" reprinted in his *Rights, Justice and the Bounds of Liberty: Essays in Social Philosophy* (Princeton, N.J.: Princeton University Press, 1980), 151

⁴ Feinberg "The Nature and Value of Rights", 151

⁵ Both claims, and especially the first one, have often been taken for granted in what might be called the 'mainstream discourse' about human dignity, especially by those philosophers who work in the human rights tradition. However, it has seldom been explicitly justified why we should conceptualize human dignity within a rights approach.

Two contrasting substantive conceptions of human dignity consistently flow from the above stated general claims: one who conceptualizes dignity within this mainstream framework has to endorse either the conception that human dignity is a foundation of rights or, following Feinberg, declare that dignity is the normative status for having rights. As the discussion in chapter two shall reveal, various ways of conceiving human dignity as a foundation do not provide arguments we would find compelling about the nature of human dignity. When conceived as a foundation of rights, human dignity will lose its peculiar connection to specific ways of treating human beings; that is to mean, a defense of dignity as a foundation to rights does not seem to account for dignity's unique relevance to the vindication of certain rights than others. A dignitarian foundation of a right to autonomy, for example, pales in comparison to a dignitarian foundation of rights that protect human beings from cruel and inhumane treatments; and such a distinction evades the familiar way of conceiving dignity as a foundation. That leaves the status conception of dignity as the only viable, and I believe the most plausible, substantive theory within the rights approach.

Nevertheless, it may still be thought that dignity's relationship with rights may be just one piece of the puzzle such that other morally significant elements to the notion of dignity may come from normative theories within which the notion of rights is not central. And that compels us to conduct the second thought experiment so as to explore whether its relation with rights is all that is normatively significant about human dignity.

Nowheresville II (wayward Rightsville). Michael J. Meyer asks us to imagine an improved version of *Nowheresville*, wherein all the individual rights that were initially withheld from it are now fully restored. It has now become a flourishing society in which moral rights are firmly in place and its inhabitants routinely respect the rights of others and unequivocally demand their own. But there is one crucial twist to their reality, which is that its inhabitants have suddenly lost the capacity for self-control. Although this new status quo is invigorated by the presence of rights at their disposal, the sudden disappearance of self-control made it difficult for Nowheresvillians to exact a proper use of their new found rights.

The lack of self-control translates into two contrasting reactions; some inhabitants act completely docile and unresponsive to assaults to their person while others are overly indulgent with their

rights impatiently demanding them even when evidently they are not under threat. The latter are restless and unruly, and irritatingly self-assertive, for they are perpetually anxious that someone is about to violate their rights: they are unable to restrain their fear that they might be 'thrown under the bus' at any given moment and that fear renders them weary and distrustful of others. They might also think that others constantly ignore or look through them as if they are invisible or transparent. So they feel compelled to declare their presence by demanding what is their due each time an opportunity presents itself. This fear may have grown out of a totally reasonable worry that one is vulnerable to treatment as if one counts for nothing, but the pathological lack of self-control heightens the experience of caution and transforms it into a hysterical but proactive barrage of claiming one's rights "in that unmistakably quavering voice that indicates...[one] is haunted by the fear of being left by the wayside."⁶ Consequently, the bumptious person is excessively vigilant, as he is beset by the fear that people are bound to overstep their boundaries the moment he lets his guard down. In contrast, the self-consciously docile person sees no point in defending himself; he is either extremely cynical or does not consider himself having the moral authority to exact his dues. For him, it seems inevitable that others will eventually thread on his rights and it would be futile to guard oneself from the inevitable. As a psychological defense mechanism, he may also adopt the sentiment that to attempt and fail would add insult to injury. Therefore, lacking the capacity to compose himself and rise above his servility, he disinclines to claim his legitimate rights. In his case or in the case of the bumptious person, either way, the lack of self-control leads Nowheresvillians to an undignified life.

In light of this thought experiment, Meyer concludes: "in spite of the suggestion that by restoring rights to Nowheresville we would restore everything essential to human dignity, the man without the capacity for self-control is not in possession of his human dignity."⁷ The point is, the expression of one's dignity is as indispensable as the exercise of claiming one's rights; equally so, the capacity to self-control is a necessary condition if one is to be considered as having dignity in the same way the recognizable capacity to claim is necessary for possessing rights. Meyer states that, from his restatement of *Nowheresville*, the following is evident: "Having human dignity—

⁶ Michael J. Meyer, "Dignity, Rights and Self-Control" *Ethics* 99:3 (April 1989): 520-534, at. 526

⁷ Meyer "Dignity, Rights and Self-Control", 532

that special office or rank had by most all human beings—is necessarily related to the possession of not only the capacity to claim rights but at least the further capacity to exercise self-control."⁸

The capacity for self-control may be necessary for a proper exercise of rights and for carrying oneself with dignity; nevertheless it is a character trait and perhaps a necessary one at that, but not a normative state. In other words, possessing the moral status to make claims is normatively necessary for one to be possessed of moral rights, but I believe the capacity for self-control is condition- necessary in the material sense.⁹ And, on the flip side, the loss of the capacity for self-control is either a character defect or a deprivation of a psycho-physiological functioning of the person. But the absence of the capacity, i.e., the moral status, to claim creates a normative vacancy that no condition can estimate or replace. Therefore, to discuss the capacity for self-control in the same breath as that of the capacity to claim rights would be to make a category mistake. This can be established without denying that the capacity for self-control has significant value in the world with or without rights, and also without denying that "depriving...the inhabitants of Nowheresville of their capacity for self-control would worsen their plight."¹⁰

Meyer's thought experiment may help establish necessary conditions for persons to be considered 'being in possession of their human dignity'—the term 'possession' understood in the descriptive not in the normative sense. But being possessed of human dignity in the normative sense means something different from and utterly unrelated to effectively living up to one's dignity (which is what Meyer seems to presuppose). Moreover, the capacity to exercise self-control or the lack of it does not help establish the normative point of being possessed of human dignity for having rights. Therefore, one must not conflate necessary conditions for conferring one's rights a genuinely moral function with what is (normatively) constitutive to those rights. This brings us to the third thought experiment.

⁸ Meyer *"Dignity, Rights and Self-Control"*, 533

⁹ Perhaps the following example illustrates the distinction that I am referring to; for instance, for a certain action X to be morally good it is condition-necessary that its performance has to objectively enhance the moral context, but it may be argued to be normatively necessary that the agent intends it so.

¹⁰ Meyer, *"Dignity, Rights and Self-Control"*, 533

Decentville. Consider a modified version of *Nowheresville II*, the inhabitants of which no longer lack the capacity for self-control. It is a *Rightsville* proper, resembling the world in which we live in but even better in that it is fully governed by the most plausible conception of justice. Can one then say that in this just society its citizens would have no reason to consider their self-respect injured? According to Avishai Margalit, even in a just society people would have a sound reason for thinking their self-respect injured.¹¹ Injury to self-respect or humiliation constitutes a violation of human dignity: "Humiliation is a concept based on contrast," declares Margalit, "and the opposite of humiliation is the concept of respect for humans. If there is no concept of human dignity, then there is no concept of humiliation either."¹²

Of course violation of rights consist in injury to self-respect but, he contends, there is no mandatory connection between injury to self-respect and violation of rights. The way to vindicate that claim is by exploring whether injury to self-respect can be adequately explained through a system of morality without a concept of rights, or rather positively by trying to conceive a moral theory that could confer the necessary normative components for self-respect without making any recourse to the concept of rights. In that regard, we can (re)consider the case of Uncle Tom (from Harriet Beecher Stowe's novel "Uncle Tom's Cabin"), portrayed in the novel as a classic incarnate of servility, by resetting his story within the context of a society that has no concept of rights and ask ourselves what would it take to prevent Tom from having a sound reason for considering his self-respect injured.

According to Margalit, injury to self-respect manifests in three senses: "treating humans as non-human, rejection [of a human being from the (moral) human commonwealth], and acts intended to lead to lack of control or to highlight one's [perceived] lack of control".¹³ Any sort of treatment that could confer people a sound reason for feeling humiliated can be illustrated in terms of one of these three senses of injury to self-respect. Now, the question is: does any of these three senses necessarily require a system of morality that includes rights? Humiliation in all its three

¹¹ Avishai Margalit, *The Decent Society* (Cambridge, M.A: Harvard University Press, 1996)

¹² Margalit *The Decent Society*, 149

¹³ Margalit *The Decent Society*, 146

senses, says Margalit, involves "a type of cruelty [of symbolic nature] that can be directed only at human beings"¹⁴ and its prohibition does not necessarily call for establishing a just society. In order to defeat humiliation it is necessary to have a decent society; however, being in possession of a valid conception of the just society is neither a necessary nor a sufficient condition. This is particularly because a morality based on duties, or for that matter a morality of ends, can provide an adequate theoretical basis for the conception of a society that does not humiliate its members. Members of *Decentville* need not be possessed of rights because a robust conception of moral obligations (as Kant would have it, for instance) that imposes categorical duties for respecting humans can protect people from the three senses of injury to self-respect. One can think, with John Rawls, of a "decent hierarchical society" that establishes a robust conception of duties including one that explicitly instructs its members 'to honor and respect the humanity in one's own person and in the person of another and never to disgrace/humiliate a fellow human being.' As long as its moral codes are framed as categorical commands not merely as appeals, this society would have the normative wherewithal to protect people like Tom from any form of humiliating treatment. Incidentally, a decent society is one that Tom would probably find appealing since his personal values gravitate towards notions of honor and dignified demeanor.

I understand Margalit's reasons for not identifying respect for humans with respecting their rights, and I believe he is right in thinking that humiliation (violation of dignity) is partly due to humiliating gestures—"the symbolic element, which expresses the victim's subordination"—that may not be adequately captured by a distinctively pedantic notion of rights.

However, in rejecting the notion that respecting human dignity is inextricably linked to respecting certain rights, Margalit undercuts dignity's special moral significance and the correlating idea that its abridgement constitutes exceptionally stringent moral offense. Being possessed of human dignity—that special moral status had by all humans—must warrant distinctively stringent requirements against certain ways of treating human beings. One of my concerns with respect to Margalit's conceptualization of the matter is that, not all forms of injury to self-respect necessarily constitute humiliation. Furthermore, what I found particularly

¹⁴ Margalit *The Decent Society*, 146

troubling with Margalit's *Decentville* is his belief that the talk of what constitutes human dignity supersedes the talk of rights.

Towards the end of the fourth chapter and at the beginning of the fifth, I sought to establish the idea that having the moral status expressive of human dignity minimally requires being a sort of entity that can be owed duties, or, more precisely, being possessed of dignity signifies that "the human person has the right to be respected, it is the subject of rights, possesses rights." Dignity confers each human person the standing as someone to be reckoned with. I do not see how this sort of status conferred by human dignity can adequately be captured in a system of morality that makes no reference to the notion of rights.

Offense to human dignity is a very serious moral breach, and that appeals to dignity are not to be made indiscriminately in every case of moral indiscretion. For we reserve references to human dignity to regulate some fundamental ways in which we ought to treat each other, which makes it painfully evident that not all violations of rights are perforce dignity violations. In my view, human dignity is more pertinent to certain rights than others; but, by that, I do not mean to suggest that a violation of human dignity never occasions in conjunction with violation of a right that does not ordinarily reflect our basic equal status, our dignity. I believe, specific rights that protect us from degrading, humiliating and other inhumane treatments are direct instances of the respect due to the dignity of persons. Nonetheless, other rights that are not in the first instance related to human dignity can be given a dignitarian gloss when they are deployed in order to protect the basic moral standing of persons as human beings. I take the civil rights movement of the 1960s, specifically the struggle to secure equal voting rights for black people in the American South, as a telling example of how a civil rights struggle transforms into struggle for the respect of human dignity. I also take humiliating and degrading treatments as paradigmatic violations of human dignity, for these kind of (mis)treatments manifest a fundamental and total breach of "the mandatory quality to the relation of attitude to dignity." Respect for human dignity is distinct, albeit subtly, from respect for rights because the sense of respect attributed to dignity is respect-as-respectfulness. These are some of the reasons for thinking of human dignity as a moral status.

As a basic moral standing had by all human beings, human dignity relates to rights in two distinct but closely related ways: dignity as a status for having rights and as a content of some

rights whose moral function is for the protection of that very moral standing. This, I believe, is the most plausible way of thinking about human dignity. It does not tie the theory of human dignity exclusively to the rights approach, for it leaves open the possibility that human dignity could still play other noteworthy normative function outside the realm of rights morality.

Nevertheless, if we can connect rights morality to the theory of human dignity in the way that I propose, we will cast a ray of light on one of the fundamental philosophical questions: why be moral? Perhaps it would be an overstatement to say with Dworkin that "without dignity our lives are only blinks of duration", but it would be wise to join him in declaring that "if we manage to lead a good life well, we create something more. We write a subscript to our mortality." With that thought I indulge my readers to the main content of this dissertation.

Chapter 1.

Skepticism About Human Dignity

1.1 Introduction

The concept of human dignity does not only attract ardent proponents but also vocal detractors. Two kinds of skeptical arguments appear principally in the moral discourse on human dignity: one that views dignity as an indeterminate, ambiguous or empty concept; and another that endorses an adequate meaning to dignity but insists that its substantive content has to come from another, more familiar, moral concept. My principal concern is to evaluate different versions of skepticism against the mainstream contention that human dignity is a fundamental moral concept.

The discussions in this chapter proceed in the following order: I shall first identify the charges that critics have mounted against a positive appraisal of human dignity, highlight what aspect of the concept each objection aims to undermine, formulate plausible ways by which we can resist unjustified objections or debunk overstretched conclusions that may be based on legitimate initial observations, and finally explore some suggestive ways for conferring positive content to the concept of human dignity.

1.1.1 Summary of the General Status of the Skeptical Discourse

In all fairness, the majority of dignity skeptics are principally motivated by the need for critical analysis of the concept, while being bewildered by the confusing ways with which dignity appears in the debate. Whereas, with Doris Schroeder, others are alarmed by what they consider as dignity's unavoidable metaphysical, ideological or religious underpinnings. Such is the difficulty of importing the notion of dignity into our modern, secular, post-metaphysical 'foundations' of normative ethics, according to the view shared by a number of dignity skeptics. But for some, it is very hard to tie concepts as abstract as human dignity to one specific ideology. This fact instead opens the floodgates for localized interpretations of the concept; dignity is often presented as an abstract universal without a precisely defined content rendering it vulnerable to skilful appropriation for the purpose of providing controversial claims the appearance of universal validity. This is the sense in which Dieter Birnbacher referred to dignity as a “conversation stopper”—a particular predicament of a concept “that is not fixed

in its meaning and can therefore marry otherwise opposing views.”¹ Incidentally, the proliferation of the talk of dignity in applied ethics, specifically in what is otherwise known as ‘the ethics of marginal cases’² illustrates how the concept of dignity can be employed by both sides of the debate, and often in the same discursive context, to settle ethical controversies. In Birnbacher's observation, the introduction of dignity by each side of the debate was not particularly designed for injecting clarity and critical advantage over the contrary view. Instead, the fact that the concept was presented as notoriously vague as it is signals the end of the conversation; for when one claims that human dignity underlies his preferred position at any given debate in applied ethics, often times, what he consequently declaring is that his position has universal validity.

What seems problematic is the fact that dignity is merely postulated to confer argumentative edge without at the same time accompanied by, if anything, a careful articulation of its content. I think, this is a fair objection against many employments of dignity in contemporary ethical controversies. Incidentally, at least three skeptical reactions resonate with the stated observation. Firstly, as Christopher McCrudden observed, “[s]ome will undoubtedly be impatient with inconclusive and potentially nerve ending debates, and may prefer to opt for a placeholder idea of dignity, without (...) content.”³ Although this might help avoid the dangers of uncritical deployment and distortion of such a powerful concept as human dignity, it too has its problems. And secondly, some would want to preserve a localized content to dignity by promoting the recognition of contextual meanings to it. We have different senses to dignity not because we cannot agree on one usage, but because dignity serves different purposes relative to the context in which it is deployed. Furthermore, there can be no overlapping consensus over a single conception of human dignity for contextual meanings to dignity cannot be easily reconciled, or for that matter superseded. In both cases, the search for a more

¹ Doris Schroeder, “Human Rights and Human Dignity: An Appeal to Separate the Conjoined Twins” *Ethical Theory and Moral Practice*, Vol. 15 (2012): 323-335 at. p. 326

² Contentious issues in morality such as abortion (if construed as a contention about the right of the fetus), stem-cell research, human enhancement, treatment of non-human animals, issues concerning what we owe to human beings whose physical, cognitive and psychological capacities are severely impaired or disabled (namely people in irreversible vegetative state or in advanced stage of dementia), to name a few. The discourse that specifically concerns itself with the above stated issues is sometimes labelled as 'the ethics of marginal cases'.

³ Christopher McCrudden “In Pursuit of Human Dignity: An Introduction to Current Debates“ in McCrudden (ed.) *Understanding Human Dignity. Proceedings of The British Academy 192* (Oxford: OUP, 2013), 11

comprehensive content to dignity is abandoned in favour of a more pragmatic formulation of human dignity.

Obviously, contextualism challenges the presumed fundamental moral significance we routinely accord to dignity when, for example, dignity is often deployed to stress the fundamental moral corruption of slavery and degrading treatment. Ethical contextualism is not as such a formidable challenge to moral theorizing about human dignity. There is a sea of literature to the effect that contextualism is significantly less of a threat than meets the eye. I believe, there is no pertinent reason to dwell much on the discussion of ethical contextualism and how it figures in the discourse on human dignity. For that matter, there is a thornier and more sinister attack on human dignity that requires more attention. Unlike ethical contextualism that merely challenges dignity's alleged universal appeal, some critiques dismiss human dignity as a meaningless, or as meaningful but useless, concept.

Thirdly, if a placeholder idea of dignity does not hold and ethical contextualism is found untenable, some suggest that we rid moral theory off any recourse to dignity. The disdain with which some philosophers seem to hold the concept of human dignity is illustrated by none other than Schopenhauer, who declared that the concept of dignity is a "shibboleth" devised by "perplexed and empty headed moralists who concealed behind that imposing expression their lack of any real basis of morals, or, at any rate, of one that had any meaning." Schopenhauer's hostility towards the idea of dignity is very similar to what Jeremy Bentham in his *Anarchical Fallacies* had to say about the talk of natural rights: for Schopenhauer recourse to the idea of dignity is useless in the same way that for Bentham the talk of "natural and imprescriptible rights" is "rhetorical nonsense—nonsense upon stilts." A similar sentiment, which is downright scornful to any recourse to human dignity in moral and legal theorizing, has recently been echoed by Ruth Macklin.

According to Schopenhauer, dignity is capricious since the meanings traditionally ascribed to it are arbitrary. He claims, the problem with this imposing but mysterious concept—human dignity—is that its obscurity is widely celebrated as its strength, which he thought was rather borne out of philosophers' poverty of imagination and lack of critical pedantry rather than out of a sincere yearning for a deeper understanding of moral questions.⁴ The talk of the "dignity of man" is "without any

⁴ The sudden burst into the scene of the dignity talk, especially from rival theoretical frameworks, has possibly inspired Schopenhauer's vigorous rebuttal; but that is beside the point. The relevant point is that his objection is tailored towards a

genuine substance behind it”, exclaims Schopenhauer. For that reason, we have no sensible reason to hold on to this vacuous concept. Macklin defends a similar view when declaring that the current discourse on human rights is better off should we dispense with the idea of dignity. That is because, the current discourse on human dignity has so far generated no valid account of the concept which designates a content of its own. Macklin suggests that we avoid the talk of human dignity altogether for “it adds nothing to the understanding of the topic” within which it may be invoked. For according to Macklin, dignity “means no more than respect for persons or their autonomy.”⁵

Whereas, for Costas Douzinas, also a skeptic of Schopenhauerian ilk who holds that “dignity is an empty and flawed signifier”⁶, it is not wise to get rid of dignity completely for there are still adequate ways of putting dignity into formidable use in politics and morals. Douzinas argues that all abstract universals, human dignity included, often serve as battlegrounds for particular ideologies in their fight for hegemony; such is the oppressive power and violence of abstract concepts since they inadvertently, but inevitably, assist a particular ideology elevate itself to apparent universal validity. In different occasions, the idea of dignity has been utilized to vindicate the Catholic idea of the sanctity of life, the inherent worth of persons as advanced by the humanistic traditions, the Kantian as well as Libertarian idea of the inviolability of persons; these are just few notable examples in which dignity is presumably captured by comprehensive philosophical, religious or political doctrines. What allows for dignity to be adept at serving different, and often conflicting, worldviews is the axiomatic status it appears to hold, which is so for the simple reason that axioms by definition are not ideologically partisan. But once appropriated by a specific ideology, dignity adopts a content consistent with the core beliefs of the ideology or comprehensive doctrine to which it is attached and in effect helps create a de-facto monopoly of the right and of the moral truth. But such appropriation of dignity leads to a cul-de-sac, which is that, since ‘it can marry otherwise opposing views’, dignity cannot characteristically establish the transition from the particularity of comprehensive frameworks to universal validity.

particular conception of human dignity as the foundation for morals, towards which his memorable polemic seems to be particularly hostile.

⁵ Ruth Macklin, “Dignity is a Useless Concept”, *British Medical Journal* 237 (20 Dec., 2003): 1419-20. For a similar thought, see Steven Pinker, “The Stupidity of Dignity”, *The New Republic* (28 May, 2008)

⁶ Paraphrased by McCrudden, op.cit. *Supranote 3*

One way of resolving this paradox, Douzinas argues, is to allow dignity for continuous redefinition, compatible with 'localized resistance and revolt' against the *status quo*. So we have to embrace the notion that the meaning of dignity shifts in ways fitting to the currents of contingent political struggles-struggles that aim at establishing a more equitable society.⁷ That means we ought to abandon the pretence that dignity confers immutable ground for the values and principles that seemingly capture its substantive core, just because these values best account for the legitimacy of a political movement aimed at resolving practical moral and political problems of the time in any given society. According to these moderate critics of the mainstream approach to dignity, it is imperative that we do not ignore the waves of political struggles in defining and redefining the content to human dignity as well as in spelling out the functions that it serves in moral and political praxis.⁸

This chapter defends the thesis that there is a normatively relevant presence of human dignity in the (moral) human rights discourse. In order to establish that, it will first cast a considerable shadow of doubt on the outright rejection of the concept of human dignity. It does that first by pitching a case for the importance of not neglecting some aspects of the historical employment of the concept. Of special importance are the narratives that inspired great historical upheavals against injustices whose towering significance in shaping human history is demonstrated by their persistent presence in our collective memory. History is replete with various examples of the sort I am talking about. Take the institution of slavery, for instance: the struggles for its abolition were clearly informed by the idea of inherent equality in worth of all human beings. At the outset, the narratives informing the struggles for freedom were perceived as revolutionary, if not utopian, for they were loaded with, by the measure of the time, an esoteric high language of 'inherent dignity and equal worth of all human beings'; nonetheless, under the tutelage of the idea of human dignity, those movements proved to be powerful catalysts for the abolition of institutions that persistently served to oppress, objectify, humiliate, dehumanize, infantilize and reify countless peoples across the globe. That suffices to cast some shadow of doubt on the charge that dignity is a useless and vacuous concept. Although I acknowledge that historical usage is not a

⁷ Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Abingdon, Routledge-Cavendish, 2007)

⁸ These critical points are quite different from the sort of 'arresting criticisms' that often come to capture the imagination with catchy phrases like 'the stupidity of dignity' or the reference to dignity as 'a useless concept'. The latter prescribes that, unless used in a different sense, for instance to convey social honor and uprightness of character, we should dispense with human dignity as a claim attached to persons.

final proof of conceptual verity, it is nonetheless indicative of possible theoretical significance of the concept.

Obviously, there is a lot to be done with respect to establishing a sound and comprehensive account of human dignity. Nevertheless, I maintain that we should not give up on exploring the concept of dignity merely on the basis that much of its existing employment is unbearably confused. In this regard, I concur with Ronald Dworkin's imposing commentary on dignity when he states:

The Idea of dignity has been stained by overuse and misuse. It appears regularly in human rights conventions and political constitutions and, with even less discrimination, in political manifestos. It is used almost thoughtlessly either to provide a pseudo-argument or just to provide an emotional charge: campaigners against parental genetic surgery declare it an insult to human dignity for doctors to repair disease or deficiency in a fetus. Still it would be a shame to surrender an important idea or even a familiar name to this corruption. We should rather take up the job of identifying a reasonably clear and attractive conception of dignity.⁹

Similarly Jeremy Waldron views the controversy surrounding the concept of human dignity in positive light. I concur with Waldron's thoughtful remark that "contestation [between rival accounts of dignity or of any other concept] might generate for us a richer sense of what the concept involves than we would have with a concept that had been arbitrarily pinned down for example with a stipulative definition."¹⁰

1.2 Types of Dignity Skepticism

Dignity skepticism, says Jeremy Waldron, "is actually hard to pin down, because there is no well known locus of philosophical skepticism concerning the human dignity principle."¹¹ But, one suggestive way of sorting out dignity skepticism may be on the basis of their stringency: by that measure, we can have either a 'moderate skepticism' of cautionary nature directed at the specific ways in which dignity figures in the normative ethical discourse, or a radical skepticism which principally

⁹ Ronald Dworkin, *Justice For Hedgehogs* (Cambridge, M.A.: Harvard University Press, 2011), 204

¹⁰ Jeremy Waldron, "What do the Philosophers Have against Dignity?" (2014). *New York University Public Law and Legal Theory Working Papers*. Paper 496, 12

¹¹ Waldron, "What do the Philosophers Have against Dignity?", 4

challenges the prevailing intellectual culture of appraising dignity as a basic moral concept. I believe this dichotomy is in concert with the purpose of this chapter, because it helps isolate the most formidable challenges to the mainstream theoretical standpoint that confers human dignity a prominent place in moral and political discourse.

Michael Rosen discusses the case against dignity on both grounds, although he neither makes explicit distinction of that sort nor does he commit himself to dignity skepticism on either ground. Yet, Rosen seems to be more sympathetic to a moderate skepticism that challenges the specific ways in which human dignity has been used or misused both in moral and legal reasoning and practice. For him, whether we should do away with human dignity is a misplaced question since the concept of dignity has already been firmly established in our moral discourse.¹² It therefore seems more appropriate to draw on a more tempered approach at dignity skepticism. He articulates 'moderate skepticism' along the following frequently stated charges against dignity: that in judicial decision making dignity is potentially anti-democratic; that it could serve as an attack on autonomy in the hands of the powerful; that it can be a “Trojan horse for religiously inspired attacks on equality”; that it is an obscure concept; “and that it can end up being used on both sides of the debate”.¹³ In the forthcoming sections, I shall elaborate some of these points in detail.

1.2.1 Dignity and Judicial Review

Evidently, the familiar practice of judicial review has sometimes been used to override a legislative act or an administrative action over delicate and sharply divisive social issues. For example, in 1993 the German Constitutional Court declared unconstitutional a legislative motion that would partially legalize abortion, on the ground that it conflicts with human dignity.¹⁴ As clearly stipulated under Art.

¹² Michael Rosen “Dignity: The Case Against” in McCrudden (ed.) *Understanding Human Dignity*. Proceedings of The British Academy 192 (Oxford: OUP, 2013): 143-154, at 153

¹³ Paraphrased in McCrudden, op.cit., p. 12; also Michael Rosen “Dignity: The Case Against” in McCrudden (ed.) *Understanding Human Dignity*. Proceedings of The British Academy 192 (Oxford: OUP, 2013): 143-154

¹⁴ In contrast, in 1973 the US Supreme Court ruling—*Roe vs. Wade*, struck down a centuries old criminal law that banned abortion except to save the woman’s life. The Court recognized that the constitutional right to privacy encompasses a woman’s decision whether to terminate a pregnancy; considering it as a medical issue, according to the Court, it is within the woman’s private sphere to make a decision in consultation with her physician. The Court’s account, however, makes no mention of reasons pertain to injury to a woman’s dignity. It is only later, in the Supreme Court’s 1992 decision on *Planned Parenthood of Southern Pennsylvania v. Casey*, that liberty based vindications were given a dignitarian gloss, in ways *Roe vs. Wade* did not. See Donald P. Kommers, ‘Autonomy, Dignity and Abortion’ in Tom Ginsberg and Rosalind Dixon

1 of the *Grundgesetz*, which declares that “Human dignity is inviolable. To protect it shall be the duty of all state authority”. This decision was consistent with an earlier decision of the Constitutional Court to overturn a 1974 law that would decriminalize abortion during the first 12 weeks of pregnancy. Citing Arts. 2(2)(1) and 1(1)(2) of the Basic Law, the court reasoned: “Where life exists, human dignity is present to it”, therefore, the duty of *The State* to protect unborn life flows directly from the fundamental provisions of the Basic Law.

However, the case for partial legalization of abortion had already gained traction by a substantial majority both at the level of legislative representatives as well as by the court of public opinion. But in a decision that sets a chilling precedent, the court invoked human dignity to counter what would otherwise be a legitimate democratic authority. Obviously, the point is not that judicial decision should always mobilize the principle of dignity in ways that serve the liberal perspective on social issues. But it seem to clash with the democratic pillar of political liberalism, regardless of whether substantively the legislative majority supports a liberal or conservative agenda.

What is more striking is that in legal systems in which dignity is explicitly articulated as a basic constitutional principle, there exists a parallel legal practice of considering the principle of dignity as a bulwark against possible infringements of basic rights by the state under extraordinary circumstances. For instance, in the aftermath of the 9/11 terrorist attacks, the German legislature deemed it necessary to promulgate a legal statute that would legalize a wilful sacrifice of the lives of the unlucky few on board a high jacked plane in order to help prevent a tragedy of epic proportions, for they are doomed anyways. In a famous ruling- otherwise known as the Aviation Security Case, the Federal Constitution Court of Germany stroke down as void the Aviation Security Act of 11 January 2005, which would authorize the Armed Forces to shoot down a hijacked plane that would inevitably be used as a weapon against substantial civilian life. The court responded by invoking the provision that human dignity is inviolable, which it subsequently interpreted in the spirit of Kant. In concrete terms, the inviolability of human dignity signifies that no single individual's life can be used as a means for saving the lives of others. Consequently, “[s]uch an action [i.e. deliberate killing of innocents, despite the fact that they are doomed]”, the court argues, “ignores the status of the persons affected as subjects endowed with

(eds.), *Comparative Constitutional Law* (2011); Reva B. Siegel ‘The Constitutionalization of Abortion’ in Michel Rosenfeld and Andras Sajó (eds) *The Oxford Handbook of Comparative Constitutional Law* (Oxford: Oxford University Press, 2012): 1057-1078

dignity and inalienable rights. By virtue of their killing being used to save others, they are treated as objects and at the same time deprived of their rights. Given that their lives are disposed of unilaterally by the state, the persons onboard the aircraft who, as victims, are themselves in need of protection are denied the valuation which is due to a human being for his or her own sake.”

Moreover, taken as a constitutional value, human dignity sets a very high bar for judicial intervention against certain infringements of basic liberties. Courts have occasionally refused to intervene in what appears to be a flagrant invasion of privacy, for instance, when the state arrogates to itself the power to conduct extensive mass surveillance of citizens on the grounds that it does not necessarily constitute contempt for the inherent dignity of persons. The downside is that, this could set us on a slippery slope towards a culture of judicial tolerance over state sponsored violations of basic rights under the pretext of imminent and extraordinary danger to national security. Some may challenge the slippery slope argument on the basis that there is no sufficient empirical evidence to back it up, although post 9/11 anti-terrorism legislation appears to prove otherwise. Nonetheless, the relevant point is, in the legal sphere human dignity may serve conflicting purposes both as a reason for intervention and as a reason to refrain from intervening in familiar cases of attacks on basic rights.¹⁵

The manners in which human dignity figures in law gives the impression that law has it serve a confusing function; to put it mildly, law confers no single canonical interpretation of dignity. But the jurisprudence of human dignity is much more evolved than the appearance of unruly application might

¹⁵ The dignity premise does not discriminate between the right to life and liberty rights. Thus, there is no adequate explanation for invoking dignity as a reason for intervening on the state's infringements of rights in one context and as a reason for tolerating civil rights infringements in another context. By no means this is meant to discount the thesis that the right to life is more stringent than protection of civil liberties. A number of ethical and legal, as well as pragmatic, reasons may work in concert to justify the primacy of the right to life over civil liberties. But there is nothing in the concept of human dignity that essentially discriminates between the right to life and civil liberties. Some may disagree with my assertion to the effect that there is no special affinity between the right to life and the notion of the dignity of persons. In fact, there isn't unless by dignity they mean "sanctity of life". I take it that, conflating human dignity with the notion of sanctity of life is more pervasive in the academic discourse than meets the eye. The distinction, however implicit, is evident in many heated controversies in applied ethics. The debate on assisted suicide is a peculiar example wherein a conceptual separation between dignity and sanctity of life is crucial, though not decisive, to any realistic chance of resolving the underlying moral dispute.

Concerning the right to life, different normative implications obtain from each concept. A belief that life is sacred implies an absolute right to life in that it cannot be overridden in any circumstances. By definition, that automatically amounts to a blanket prohibition of assisted suicide, and for that matter of suicide, as morally impermissible. It suffices to say that the concept of human dignity does pursue a different normative trajectory.

seem to suggest. Perhaps, we need to look into the validity of some court rulings that are grounded on the interpretation of constitutional provisions of dignity. Legal hermeneutics is an evolving enterprise, perfecting its trade through practice over time; so we should not judge the adequacy of such a prominent legal concept entirely by some selected incidental interpretations of legal texts that appear to head in the 'wrong' direction.

Besides, what seems to be true of human dignity in the legal sphere does not necessarily bear on its equivalent in the moral domain, as law and morality are partly characterized by distinct normative realms. Even those who subscribe to the 'inner morality of law', or, for that matter, even a very stern natural law theorist, must acknowledge that law encompasses a normative sphere that can stretch outside of moral parameters. On the one hand, law's procedural nature partly accounts for its bindingness in ways moral obligations would not plausibly be vindicated, underscoring that the procedure I am referring to does not mean to include argumentative procedures and adequacy conditions but something like an adoption process. On the other hand, one who subscribes to the idea that the legal concept of human dignity is structurally similar to the moral concept must recognize that it is a different matter to consider whether the legislation of human dignity is “supposed to be the legal representation of the moral concept.” I am inclined to agree with Jeremy Waldron when he claims that “[m]ay be every legal idea has a moral underpinning of some sort; but it would be a mistake to think that the moral underpinning has to have the same shape or content as the legal ground.”¹⁶ The same thing can be said about human dignity as it manifests both in the legal and moral frameworks. Its legal recognition may lead to misleading interpretations or generate inconsistent applications; but that does not necessarily reflect an obscurity inherent to the concept of human dignity in morality.

1.2.2 Problem of Content: A Prelude to the Redundancy Argument

Many skeptics have stressed that the most pervasive problem with the concept of human dignity is the problem of content. Like any other concept in philosophy, dignity is no stranger to various nuances in meaning and that it can be used in many distinct ways. This fact is hardly one that skeptics would take an issue with had the core substantive content of the term been distinctively clear. However, from Schopenhauer's “animus against dignity” to Maklin and Birnbacher's charge at redundancy, it seems evident that dignity skepticism is principally concerned with the problem of content. Some of the most

¹⁶ Waldron, “*Dignity Rank and Rights*”, 19-20

outstanding charges against dignity—namely, the view that it is a vacuous concept, that it is obscure, that it is capricious, that its content is subject to contextual redefinition over time, and that it is redundant—are clear instances of the problem of content.

This chapter is mainly concerned with a model of the problem of content which declares that dignity means nothing more than respect for autonomy or respect for rights. According to the most popular formulation of this view, as spearheaded by Macklin, dignity can be supplanted by autonomy without any loss of meaning; in that regard, dignity could serve as a mere decorum, casting an attractive impression on a controversial position that may follow from autonomy affirming premises.

The redundancy thesis may be contrasted, and ought not be conflated, with another brand of dignity skepticism according to which arguments from dignity occasionally serve as an attack on autonomy. The most familiar dwarf tossing case clearly illustrates the point: it is the story of Manuel Wackenheim, a French dwarf who was prohibited from participating in a dwarf-tossing contest by the *Conseil d'État* (henceforth, the *Conseil*) on the grounds that such practice violates human dignity, despite his vigorous insistence that he has a constitutionally protected right to autonomy that permits him to chose to do with his body whatever he so desires. He further claims that the *Counseil's* prohibition, since it unceremoniously violated his fundamental right to autonomy, amounts to a flagrant violation of his dignity.

This dwarf-tossing debate may be framed as a clash between two contrary views of dignity skepticism. Clearly, both parties to the dispute have no doubts about the significance of human dignity; in fact, both explicitly deploy human dignity to substantiate their respective (competing) views on the matter. Their dispute is on the relationship between the principle of human dignity and the right to autonomy. It should, however, be noted that neither the *Conseil's* position nor Wackenheim's view appeared to have been informed by Kant's idea of autonomy, but by the same idea of autonomy in its modern emancipatory sense, as familiarly present in our current moral and legal traditions. On the one hand, we have the *Conseil* ruling that clearly views dignity antithetical to, and thus overriding, individual autonomy, while on the other, Mr. Wackenheim was convinced that the dignity of persons chiefly protects individual sovereignty through a prescription of the state's categorical duty not to intervene in individuals' sovereign choices.

Michael Rosen perceives this legal dispute along the lines of the *Conseil's* position—as a clear instance of dignity's occasional hostility to the principle of individual autonomy. For that matter, Kant would have a very different thing to say, that he would approach the dwarf tossing case in a totally different light. The idea of autonomy that Rosen and Macklin subscribe to is quite different from what Kant mean by it, even though Kant and Macklin recognize an essential connection between dignity and autonomy. At the heart of Macklin and Rosen's understanding of autonomy is found an echo of the modern view of autonomy, for which being autonomous means 'being able to do as one chooses' or being granted the sovereignty to self-determine essential aspects of one's life. Kant's idea, however, differs profoundly from that. For him, the individual's autonomy is a function of self-given moral law, such that by constraining oneself through self-legislated categorical moral imperatives, the rational agent thereby renders herself answerable only to herself. In support of the general substance of Wickenheim's standpoint Kant would say that "all rights are based on the concept of freedom, and are the result of preventing damage to freedom in accordance with [the moral] law" but against Wickenheim's specific interpretation of autonomy as unbridled freedom, Kant would claim that "[a]ll obligation is the restriction of freedom to the conditions of its universal agreement with itself." (Virgil, V 27:587; 19:294)

Imposing constraints on one's choice is, therefore, consistent with the autonomy of persons; it may even be more accurate to say that, according to Kant, moral constraints on one's freedom of choice are rather constitutive to autonomy. Hence, a rational person must not choose a course of action that curtails his chance of leading an autonomous life; that is precisely why voluntary servitude is immoral since it violates our "duty with reference to the dignity of humanity within us". Kant would certainly argue that consenting to a dwarf-tossing practice constitutes self-objectification, which consequently dishonors the humanity in the person. Respect for the humanity in one's person is a categorical moral duty that the game of dwarf throwing certainly, but perhaps unassumingly, fails to respect.¹⁷ Furthermore, a Kantian may declare the game of dwarf-tossing as morally impermissible on account of Kant's formula of humanity according to which it is incumbent upon one to: "treat humanity, whether

¹⁷ Acting out of the desire to fulfill a set of preferences is, according to Kant, contrary to the moral cast of mind. Consequently, the case of Mr. Wackenheim perfectly manifests Kant's misgivings about popular misunderstanding of moral requirements. In popular moral thought, autonomy is portrayed in stark contrast to structural constraints on desires and preferences, self-imposed or otherwise. According to Kant, the moral law designates exactly that sort of constraint. Nonetheless, such constraint is an essential condition of, rather than an obstacle to, autonomy. As Kant has it, the categorical moral constraint is the condition under which a rational person can be autonomous in the phenomenal world.

in your own person or in the person of another, always at the same time as an end never simply as a means.” Since morality, for Kant, is the condition under which a rational person can be truly autonomous, in the dwarf-tossing case, what is to be the adequacy condition for autonomy (i.e., moral constraints against raw, unbridled liberty) is registered as its anti-thesis. Therein lies the fallacy of claiming that dignity can be invoked in order to mount an attack on autonomy, because the very condition for autonomy can only be an internal constraint but never its nemesis.

The above discussion on Kant was simply to brainstorm the discussion by highlighting that autonomy can mean much more than a simple account of personal sovereignty. As noted earlier, neither Wickenheim nor the *Counseil* have adopted a Kantian reading of autonomy. It seems clear that, the *Conseil* must have had autonomy-overriding notion of human dignity in mind when it vetoed against the practice of dwarf tossing. And such an understanding of dignity that clearly placed it at odds with the hard-won civil liberties of our time runs suspect of inadequacy. Nevertheless, I would say that the indignant posturing of dignity's apparent hostility to personal sovereignty ought not pass for philosophical critique.

Whereas, on the flip side, Mr. Wackenheim's position may help ward off the suspicion that dignity may be inadequate and an 'empty or flawed signifier'; nevertheless, it brings into perspective another strand of skeptical charge. One may wonder: 'clearly autonomy regarding account of dignity is a welcoming prospect. But, then, why bother introducing a blurry concept while the idea of autonomy would do?' With this rhetorical question we now turn to, what I believe to be, the most rigorous type of dignity skepticism—to what is sometimes referred to as 'the redundancy argument'.

1.2.3 The Redundancy Argument

Roughly put, the redundancy argument claims that the normative core meaning of dignity can be cashed in terms of respect for autonomy or in terms of other more familiar and clearer concepts, we can thus declare dignity redundant and steer clear of utilizing it in moral theorizing. Nevertheless, dignity could still be used for heuristic purposes, and nothing more substantial than that; for, according to this view, the concept of dignity adds no further normative fact than respect for autonomy or respect for rights.

I believe the argument for redundancy rests on premises that pinpoint some element of truth about the status of the current discourse on human dignity: it rests on observations that the discourse on human

dignity is deeply disoriented, that delineation of dignity's content has been riddled with questionable ideological battles and that the most prominent, and perhaps promising, substantive conceptions to dignity are invested in the idea of rights and of autonomy.¹⁸ I will, however, argue that the charge of redundancy is a strong claim based on weak premises.

Redundancy claim has not always been asserted with an acute critical intent; sometimes it is an honest but ill-fated attempt at demystifying the concept of dignity that eventually morphs into an argument for redundancy. James Griffin for example states that "autonomy is a major part of rational agency rational agency constitutes what philosophers have often called, with unnecessary obscurity, the 'dignity' of persons."¹⁹ According to Michael Rosen it is evident that, for Griffin, the dignity of persons is, at least partly, substitutable with 'autonomy'.

Rosen also believed to have found traces of redundancy claim in the writings of Joel Feinberg; according to him, Feinberg's idea of human dignity is perceptively akin to Griffin's view.²⁰ In Feinberg's writing, we find the discussion on dignity at the forefront of the passage where he laid down his account of the nature and value of rights. In "*The Nature and Value of Rights*", Feinberg refers to dignity as "the recognizable capacity to assert claims"; and, equating respect for human dignity with respect for persons *simpliciter*, Feinberg states that taken as a normative disposition, "[t]o respect a person...or to think of him as possessed of human dignity simply is to think of him as a potential maker of claims".²¹ But in moral practice, "respect for persons may simply be respect for their rights, so that there cannot be one without the other; and what is called 'human dignity' may simply be the recognizable capacity to assert claims."²² At first glance, this passage appears to suggest equivalency

¹⁸ It is not uncommon for philosophers to draw parallels between requirements for respecting the dignity of persons and respect for the right to autonomy. For instance, in the famous "Philosophers' Brief" on assisted suicide six leading philosophers of our time (Ronald Dworkin, Thomas Nagel, Robert Nozick, John Rawls, Judith Jarvis Thomson and Thomas Scanlon) made a case for, what they refer to as, a "constitutionally protected liberty interest" for patients to hasten their own death. They draw on a Supreme Court case, *Planned Parenthood V. Casey* (505 U.S. 833.851(1992)) in which the court reaffirmed "the right of people to make their own decisions about matters involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy."

¹⁹ James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), 40

²⁰ Michael Rosen, *Dignity: Its History and Meaning* (Cambridge, M.A.: Harvard University Press, 2012), 5

²¹ Joel Feinberg, "The Nature and Value of Rights," in Feinberg, *Joel Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press 1980), 151.

²² Feinberg "*The Nature and Value of rights*," 151

between possessing rights and being possessed of human dignity. Again, being worthy of respect (or being possessed of human dignity) means having the recognizable capacity to assert claims. It follows that, since respect for persons may just mean recognizing his/her capacity to assert claims, simply respecting the person's rights may do that. It would be unnecessary to bother about respecting one's capacity to assert claims if one's right-claims are duly respected.

However, thinking in reverse may reveal that respect for dignity may not simply be respect for their rights. The point is further illustrated by the fact that violating the rights of persons does not necessarily imply the denial of their recognizable capacity to assert claims. Most incidents of right violation do not by definition rest on the denial of the victim's recognizable moral capacity (standing) to assert claims. It is fair to say that, within Feinberg's conceptual framework, respect for the dignity of persons is not reducible to respect for their rights. And, for exactly the same reason, Feinberg may be criticised for missing such an important implication that his own theoretical framework suggests.

Whereas, with Griffin we may have three layered Russian doll type of relation between autonomy and human dignity, wherein dignity is inscribed in normative agency which partly constitutes autonomy. It seems to me that Griffin propounds the view that dignity(as normative agency) is the foundation of human rights— a topic that shall be discussed in chapter two of this dissertation. As with Rosen's interpretation of Feinberg's view, so in the same way, I found Rosen's reasons for taking Griffin as an unwitting proponent of the redundancy argument are rather unconvincing.

In the forthcoming section I will take up this discussion on redundancy and discursively analyze a defense of the claim that dignity is substantively reducible to certain minimal rights, by Dieter Birnbacher.

1.2.4 Problem of Concretization

Human dignity is one of the concepts that strikes as familiar when appears in everyday moral discourse. And yet, regardless of how frequently it figures in the public sphere, "its meaning is often left for intuitive understanding".²³ Circular reasoning appears endemic to any decent attempt at pinning down its meaning: it has been claimed that we possess dignity in virtue of our humanity and that at the core of our humanity lies our dignity. It is indeed this essentialist approach to human dignity that

²³ Oscar Schachter "Human dignity as a Normative Concept", *The American Journal of International Law* 70:4, 848-854

encounters the problem of concretization, which is a specific instance of the problem of content. In a similar undertone, Rosen observed that there are epistemic and metaphysical difficulties in establishing human dignity as a residual human essence. This has to do with the specific logic often used in the attribution of human dignity. The supposition that dignity might be an inner transcendental property puts it on a par with abstract universals of the Platonic 'intelligible world'. The problem with abstract concepts is that, it is often difficult to cash them in concrete substantive terms. When it comes to bringing abstract entities down to the practical world of morality we arrive at multiple meanings that are invariably shrouded in irreconcilable ideological differences, which in effect allows for the proliferation of dignity talk in almost any controversial moral issue.

Although opinions about the precise content of human dignity is highly polarized across different conceptual traditions, which at times has brought about a premature dignity fatigue by moral philosophers, one feature of the concept that a seasoned scholar would strike accord with relates to the critical function that it plays. The idea of dignity inherently critiques theories that confer lexical priority to perceived collective goods over individual well-being in a manner that justifies stifling the rights and interest of individuals in the name of preserving collective good, however that may be defined. It would be unjustified to religiously stick to our collective interest in sustaining a distinct way of life if that meant doubling down on discriminatory and predatory laws against individuals that do not fit into the supposedly standard scheme of things. To think of the well-being of individuals as of subservient importance amounts to treating them not as ends-in-themselves, and that violates their dignity. We don't need to have a deeper philosophical understanding of Kant's fine arguments about the moral imperative to treat 'humanity...always as an end' to see that at the bare minimum dignity protects human subjectivity. Important moral and legal implications obtain from the stated critical function that dignity plays; for instance, existing practices of disenfranchisement of women and minorities, political persecutions or 'convert or die' approach to religious persuasion succinctly illustrate the widespread appeal of a dignitarian based protection of human subjectivity.

Moreover, for the legal interpretation of the idea of dignity, "from an international comparative perspective to a surprising degree, international case law and legal doctrine coalesce in certain crucial aspects explicitly or implicitly around certain ideas: autonomous subjectivity, basic respect, non-

instrumentalization, non-objectification and non-reification.”²⁴ Such norms that collectively define the trajectory of the post war jurisprudence of dignity come from intellectual traditions as diverse as Renaissance humanism, enlightenment reason, Christian idea of the individual as an embodiment of divinity, and socialist political thought. Interestingly enough, the foundation of modern human rights law had to be initially set on muddy grounds for it was significantly influenced by negotiations in the process of which competing ideologies compromised in achieving a common ground fairly acceptable to all interested parties. The provision on human dignity is arguably one of the few propositions that resonated well with the drafters of the UDHR. Despite some disquieting facts about the origins of human dignity in human rights law, it has grown into something meaningful over time “beyond the narrow-minded intentions and expectations of some of those who played an important role in their development.”²⁵ Accordingly, as Mathias Mahlmann has stated, “[t]he ascertainment of the worth of human beings created the normative nucleus for a crucial limitation of any relativizing of the value of individual human lives, whether by assertions of the supremacy of state power, the greatness of the nation, the importance of class interests or the superiority of a race.”²⁶ These are real and fascinating achievements of our modern legal system.

Nevertheless, some concerns still remain. Clearly, there is a direct correlation between legal validity of a concept and established legal practice. Even if we grant that the brief historical account accurately describes the evolution of the concept of human dignity in the legal sphere from a mere subversive idea to 'a more or less convincing doctrine of law', that does not bespeak the derivation of dignity's corresponding substantive content as a moral idea.

This brings us to the following point: some argue that as a legal concept human dignity is merely “different in function but identical in content with the ethical concept.”²⁷ Yet the moral concept is incredibly hard to pin down in concrete terms. In fact, there is no unitary concept of human dignity

²⁴ Mathias Mahlmann “Six Antidotes to Dignity Fatigue in Ethics and Law” in McCrudden op.cit. pp. 593-614, at. p. 600; See also Jeremy Waldron, 2008 “Cruel, Inhuman and Degrading Treatment: The Words Themselves” *Public Law and Legal Theory Research Paper Series*, Working Paper No. 08-38

²⁵ Mahlmann “Six Antidotes to Dignity Fatigue in Ethics and Law”, 600

²⁶ Mahlmann “Six Antidotes to Dignity Fatigue in Ethics and Law”, 601

²⁷ Birnbacher “*Ambiguities in the Concept of Menschenwürde*”, 113. For a similar idea, and also for a thought provoking challenge to the doctrine of “the inner morality of law”, see Waldron, Jeremy. *Dignity, Rank and Rights*. Meir Dan-Cohen (ed) (Oxford: Oxford University Press, 2012)

which is tailor made to suit every ethical context on which dignity seems to have a bearing; but dignity rather designates “a family of meanings, the members of which behave differently not only semantically but also syntactically”.²⁸ According to Dieter Birnbacher, human dignity is characterized by multiple meanings each of which can display a moral charge of varied nature and stringency, diffused across different ethical traditions stretching from virtue ethics to the morality of rights. That, however, should not be viewed as posing an intractable problem for delineating the most adequate meanings; towards that end, Birnbacher defines Menschenwürde in two distinct senses, which he call the core and extended meanings respectively. With respect to the core meaning, Birnbacher states that “[t]o respect menschenwürde [human dignity] means to respect certain *minimal* rights owned by its bearer irrespective of considerations of achievement, merit, quality, and owned even by those who themselves do not respect these minimal rights in others.”²⁹

Birnbacher lists four basic rights that Menschenwürde denotes in its core individualistic sense: “1. Provision of the biologically necessary means of existence, 2. Freedom from strong and continued pain, 3. Minimal liberty, 4. Minimal self-respect”.³⁰ But in a later writing he introduced one additional right—which evidently resembles the Kantian proviso not to treat others merely as means but always at the same time as ends in themselves. He writes, “human dignity in its central individualistic sense seems to comprise at least the following five moral rights: (i) the right not be made the object of humiliation or to be treated in humiliating ways, (ii) the right to a minimum of freedom of action and decision, (iii) the right to receive assistance in undeserved situations of need, (iv) the right to a minimum quality of life and a freedom from suffering, (v) the right not to be used to others’ purposes without consent and with seriously adverse affects to oneself.”³¹ Some legitimate concerns can be

²⁸ Birnbacher “*Ambiguities in the Concept of Menschenwürde*”, 115

²⁹ Birnbacher “*Ambiguities in the Concept of Menschenwürde*”, 110

³⁰ Birnbacher “*Ambiguities in the Concept of Menschenwürde*”, 110

³¹ Dieter Birnbacher, “Human Cloning and Human Dignity” *Ethics, Law and Moral Philosophy of Reproductive Biomedicine*, 1:1(March 2005): 50-55, at 51. There appears to be some discordance between the two sets of rights that Birnbacher stipulated over the two papers, that is because the first set of rights are so generic that it is difficult to tell whether their respective normative core is adequately captured by the later set of rights. Perhaps this marks a revision and slight change of mind on his part.

raised concerning a number of points, including how he arrives at these rights without imposing a valid criterion of adequacy. Moreover, the catalogue of rights he puts forth are as vague as the concept of human dignity itself, incidentally, some of which are separately pronounced by different authors as the single precise meaning to human dignity.

Moving on, in contrast to the core meaning, the extended meaning is purported to have a wide outreach beyond the narrow category of persons, subsequently connoting weak moral protection: it applies to entities yet to be or no longer living humans and also to humanity in the generic, speciesist, sense. Whilst for the core meaning, the object of respect and protection is the concrete human person, the extended meaning in contrast applies to “the early and residual stages of human life (human embryos, foetuses, and corpses), and one in which it is applied not to any individuals but to the human *species*.”³² It covers ethical issues relating to human enhancement, trans-humanism, stem-cell research, abortion and the debate concerning the moral status of human beings in permanent vegetative state.

What is relevant here is that Birnbacher's dual conception of dignity systematically challenges flawed deployments of human dignity in controversial bioethical issues. He believes, the recent currency of human dignity, specifically in bioethical debates, is blighted by the recurrent conflation of the extended meaning with the core meaning of dignity. Many debates in the ethics of marginal cases, namely on abortion, embryo research or on human cloning miss the point for the simple reason that they often make a recourse to the sense of dignity that does not naturally suited to the moral dispute that each seek to resolve. To be more precise, most of the controversial issues in bioethics and biolaw deal with the treatment of "non-persons" and, the problem is that, more often than not, the core meaning of dignity is wrongly made applicable to the moral situation that involves no concrete persons who could be identified as bearers of the rights. Embryos and foetuses are not moral persons (although they may be conferred legal personality); it, thus, would be misleading to ask whether they are possessed of core human dignity. For that reason, Birnbacher may be right in declaring that most bioethical debates are misguided; I think we should not quarrel with him on that score.

I would like to make one crucial remark though: the core or personal meaning of dignity, as Birnbacher has it, is essentially reductionist. He overlooks one crucial fact about the core meaning, which is that, when conceived in the personal sense dignity doesn't necessarily need to correspond to a set of basic

³² Birnbacher, "*Human Cloning and Human Dignity*", 51

moral rights, and that there is no rule that prohibits the dignity of persons from being derived from generic dignity. His analysis does not show an inherent and more importantly exclusive connection between the core meaning of dignity and minimal rights. Indeed the notion of 'dignity of persons' conceptually requires concrete persons to whom dignity can be predicated. But, on the one hand, the principle of the dignity of persons need not, however, be cashed exclusively in terms of a set of basic rights- the sort of analysis Birnbacher offers does not sufficiently warrants it. On the other hand, although the dignity of persons is predicated to 'human persons', that does not perforce preclude generic dignity from prescribing equally stringent moral injunctions. If generic dignity is articulated differently from the standard approach to it, for instance as recently conceived by George Kateb³³, it may undercut the plausibility of Birnbacher's strict, either-or, distinction between the core and extended meanings.

Consider the principle of non-humiliation, and for the sake of argument ignore the fact that Birnbacher framed it as a right. Also suppose that the principle of humiliation (or non-humiliation to be precise) reflects part of what we mean by respect for the dignity of persons. Humiliation figures predominantly in torture or slavery or any other form of cruel and inhuman treatment, and one can even maintain that it figures exclusively in those severe violations of rights. But from this premise alone it is erroneous to conclude that the reason why those treatments are humiliating is on account of rights' violations *per se*; I think it is intuitively more plausible to say that rights' violations account for the *how* but not the *why* of humiliation, or to put it succinctly in Rawlsian terms, violation of personal dignity may begin with but does not necessarily arise simply on account of basic moral right violations. What makes such treatments characteristically humiliating may not be rights' violations *per se* but perhaps due to the accompanying dehumanization that lead to the loss of moral standing/authority, or the loss of self-control due to the treatment as if one counts for nothing, or a justified loss of self-respect in the eyes of the victim himself.³⁴ That being said, one can still preserve the conviction that humiliation (or violation of dignity) does not figure in the context in which no rights violation eventuates. It seems intuitively plausible that some violations of rights may be direct instances of humiliation, but humiliation is partly a function of humiliating gestures and, for that reason, the manners in which rights are violated matter

³³ George Kateb, *Human Dignity* (Cambridge, M.A.: Harvard University Press, 2011)

³⁴ Avishai Margalit defends a position very close to the one outlined above. See Margalit, Avishai *The Decent Society* (Cambridge, MA: Harvard University Press, 1996)

to the dignitarian analysis. That being said, I shall set aside the full defense of this position for another occasion.

Furthermore, the four/five basic rights may be said to collectively mirror the substantive content of core human dignity. Then again, one may conjecture that the dignity of persons designates a moral category whose normative core is expressed in terms of a couple of fundamental moral right. This line of reasoning is reminiscent of the conception that human dignity is a moral status/standing for the possession of rights, of which certain specific rights may be considered as direct instances. Accordingly, the four or five rights could be interpreted as having a unique relationship with the said moral standing. It suffices to say that these minimal rights have a direct bearing on human dignity (understood as a moral standing) such that their violation exhibits a direct assault on the very moral standing that underscores our possession of rights. The right not to be made an object of humiliation clearly illustrates that point; humiliating action is effective when the victim is made aware of the assault to her person with the sole purpose of diminishing her in the eyes of her abusers, even more sinister is when it is specifically intended for debasing the victim in her own eyes.

At its core, respect for human dignity is about protecting the individual from certain qualified moral offenses through the provision of a set of subjective moral rights. For that matter, so Birnbacher insists: “Indeed, all the goods or rights protected by the principle of *Menschenwürde*, at least as an ethical (as opposed to legal) principle, are also protected by other moral principles. In this “material” sense, then, the principle has *no* specific content of its own.”³⁵ While apparently striking a positive note, Birnbacher continues, “what is specific to it, however, is the priority it gives to certain minimal individual rights and claims.”³⁶ In the first place, I do not really see any problem with the declaration that the basic rights that supposedly protect the principle of dignity do also underscored by other familiar moral concepts. Once again, consider the right not to be treated in humiliating ways, a right protected by the principle of *Menschenwürde*. It is also clear that violation of the victim's dignity is not the only thing that is morally objectionable about humiliating treatment. It is also objectionable, for instance, on the

³⁵ Birnbacher *"Ambiguities in the Concept of Menschenwürde"*, 112

³⁶ Birnbacher *"Ambiguities in the Concept of Menschenwürde"*, 112

grounds that humiliation causes the loss of self-control, or on the grounds that it violates the person's basic right for bodily (and psychological) integrity, or because it violates the fundamental right to autonomy.

Secondly, Menschenwürde is a principle of ranking rights that are independently postulated by other principles, so argues Birnbacher. It follows that basic goods and rights that dignity purportedly prioritizes are identified as basic for the reason unrelated to the fact that they reflect Menschenwürde. This is because Menschenwürde is not “a principle postulating a good of its own” but is more like an umbrella term. It's rather a principle that protects them from being weighed against other goods and rights ‘*outside* its sphere’. However, the normative primacy of basic rights is postulated by the very act of pronouncing them basic, and the principle that grounds the selection of some rights as basic also, by implication, serves as a prioritizing principle. Therefore, there is no need to turn to other principles to give priority for minimal individual rights that are already identified as basic. And therein lies the problem with Birnbacher's reasoning.

It is my contention that defending dignity as a prioritizing principle is incompatible with the description that human dignity does not postulate a good of its own. If dignity is a mere placeholder, it is then rather baffling why Birnbacher went to great lengths to demonstrate that human dignity is indispensable in rights morality. I suppose, the structure and substance of his own arguments have, perhaps unwittingly, commit him to insist on dignity's dispensability. But if we take him at his words—that human dignity has no content of its own, combined with the premise that a placeholder role to dignity is incompatible with Birnbacher's framework, we will wind up with this conclusion: human dignity has no significant moral function, but it may serve as a rhetorical device for making an emotional charge.³⁷

Finally, I would now like to take on Birnbacher's principal claim that dignity does not prescribe a good of its own. I can see the rigor in his reasoning, for it is based on an astute observation that every single time one makes a dignity-claim it is always attached to a claim for respecting one's basic human rights.

³⁵ Rhetorical function, for that matter, could be considered as morally relevant depending on one's general view of morality. Sophists' belief in moral relativism is indeed one vantage point of morality. Perhaps rhetorical function is analytically separable from being morally irrelevant, but for the purpose of this chapter I take it that for a concept to be rhetorical is the antithesis of it having a morally relevant role.

However, it seems to me that when I exclaim- 'respect my dignity' in relation to that which I have a right to, what I, in effect, am saying is that your display of respect for my rights is symptomatic to the appropriate attitude of respect for my dignity that you must always display. In some cases I might demand that respect for my rights must be accompanied by the right attitude reflecting your general disposition to act in a certain way when the occasion warrants it.

If I then succeed in making you acquiesce to my legitimate demands but you execute it in a sort of dismissive demeanor, I could still protest that you did not in fact accord me the proper respect, such that my legitimate moral demand is not only that my rights should be respected but indeed with the right attitude and moral disposition. I could otherwise have simply demanded that a person respects my rights, but stressing on the dignity element would, on the one hand, underscore the moral gravity of the situation, and, on the other hand, suggest that the situation requires more than an automated respect for rights. Rather than a frosty, withdrawn, robotique and prickly posture of a rule governed moral behavior often associated with the regime of rights, the concept of dignity rekindles the long-lost moral spirit of recognition, veneration, reverence, honor and deference into our increasingly detached practical moral life. That is what, in a nutshell, respect for the dignity of persons demands. Reference to human dignity may, thus, have both expressive as well as normative constitutions. Birnbacher appears to question the latter and, as a result, becomes an unwitting bedfellow of those who branded dignity "a useless concept."

1.2.5 Problem of Justification: Objections to a Dignitarian Foundation of Rights

Human dignity admits disparate meanings and that can be a source of enormous problem for its paradigmatic use in human rights theory. Although in the mainstream discourse dignity is taken to be a bedrock moral and legal principle, the concept has increasingly unsettled keen observers who argue that the fact that dignity connotes various meanings constrains certain aspects of its practical use. From their perspective, having no single overarching meaning means human dignity seems to have no foundational role to play in the constitution of human rights.

According to Doris Schroeder, the many meanings to dignity philosophers have so far espoused and defended can be classified into two categories: inviolable dignity and aspirational dignity.³⁸ Under the

³⁸ Schroeder, Doris (2012) "Human Rights and Human Dignity: An Appeal to Separate the Conjoined Twins" *Ethical Theory Moral Practice* 15: 323-335, at p. 332

first, she placed “traditional Catholic dignity” and “Kantian dignity” for both subscribe to the view that human dignity is an inviolable and non fungible normative property. Aspirational dignity consists in “aristocratic dignity”, “comportment dignity” and “meritorious dignity”. Aristocratic dignity is closely tied to the notion of (superior) rank whether conferred on the basis of purportedly inherent attributes and merits attached to social statuses and offices which the person happens to hold in virtue of birth or accomplishment. In this respect, rank reflects some salient features of the *Roman dignitas*. On the other hand, comportment and meritorious dignity function within the realm of virtue ethics- constituted by, in the case of the first, “the outwardly displayed quality of a human being who acts in accordance with society’s [rather contingent] expectations of well-mannered demeanour and bearing” and observance to objective standards of virtue, “which subsumes the four cardinal virtues and one’s sense of self-worth”, in the case of the latter.³⁹

In her view, the principal reason behind the controversy surrounding human dignity is due to the recognizable but “unresolved tensions between aspirational dignity and inviolable dignity.”⁴⁰ As long as this tension remains unreconciled, it is pointless to explore whether human rights are derived from human dignity. She intuitively, a coherent and precise account of human dignity should first be at hand before considering what use it might serve in the constitution of human rights. Consequently, given this rather messy discourse on human dignity, the discourse on human rights is better off without the purchase of human dignity and instead should be “looking for alternative frameworks to justify [or ground] human rights than relying on the concept of dignity.”⁴¹

One can say that human rights theory runs the risk of “hazard by association” when it attempts to ground rights with the significantly obscure concept of dignity. The point is simply that, foundational concepts ought to be clear, unambiguous and substantively rich; however, Schroeder contends, dignity admits a number of mutually exclusive, perhaps equally valid, contextual interpretations. This is by far Schroeder’s most sensible argument against a dignitarian foundation of rights; I use the term sensible not as valid but in the sense that it illustrates her point with some measure of philosophical lucidity.

³⁹ Schroeder “*Human Rights and Human Dignity: An Appeal to Separate the Conjoined Twins*”, 332

⁴⁰ Schroeder “*Human Rights and Human Dignity: An Appeal to Separate the Conjoined Twins*”, 324

⁴¹ Schroeder “*Human Rights and Human Dignity: An Appeal to Separate the Conjoined Twins*”, 334

In one of her arguments against dignity, Schroeder argues that controversy breeds ambiguity and, for that reason, "the concept of human dignity does not solve the justification problem for human rights but rather aggravates it in secular societies."⁴² One reason for this has to do with the fact that dignity is understood in far too many ways, and that gets in the way of it potentially providing us with the justification of human rights. In philosophy, being controversial is not necessarily a recipe for disaster, it can rather be a welcoming prospect in certain circumstances.

Controversy stimulates thought, which is a necessary ingredient for sharpening one's views and arguments about the philosophical problem under consideration. If anything, being controversial is no argument for giving up a concept of enormous significance. After all, one can say with Peter Schaber that "there are various [some incompatible] understandings of other normative and descriptive concepts as well...[for example], of justice, fairness, autonomy, respect for persons and so on. In none of these contexts would disagreement about the meaning of the relevant concepts be accepted as a reason for giving up the concept; they would more likely be seen as a good reason for continuing the discussions about the right understanding of the term in question."⁴³ Why should that be any different for the concept of human dignity?

I believe Schroeder's main thesis is unwarranted, for the following reasons. In the first place, the professed tension between "inviolable dignity" and "aspirational dignity" is neither inherent nor insurmountable. Secondly, her list of meanings to dignity does not actually portray a clear distinction but rather obscures it, nor does it exhaust all the morally relevant meanings conveyed by the notion of human dignity. For that matter, I believe that the list of meanings to dignity that Schroeder classifies into "inviolable" and "aspirational" confuses rather than meeting its intended purpose of clarifying the concept.

For instance, beneath Schroeder's survey lies an error of equating inherence with inviolability. A property that is inherent in the human person doesn't necessarily imply that it is inviolable. Inviolability is a normative commitment but 'inviolable property' is a misnomer. A property is either inherent/intrinsic or extrinsic, but whether inherent properties are inviolable (resistant to trade-offs) is a

⁴² Schroeder *"Human Rights and Human Dignity: An Appeal to Separate the Conjoined Twins"*, 334

⁴³ Peter Schaber, "Human Rights and Human Dignity: A reply to Doris Schroeder" *Ethical Theory and Moral Practice*. 17:1 (Feb. 2014): 155-161

matter of higher order normative consideration. Take the capacity for laughter, for example, an inherent property of the human person; any right pertaining to the free exercise of this wonderful human capacity is not by definition immune from violation or infringement under any circumstances. Incidentally, it is more convenient in moral reasoning to directly infer inviolability from inherent properties than from contingent qualities, regardless of how morally pervasive those contingent attributes might be.⁴⁴ Nonetheless, claims of inviolability are not given by inherence. Analogously, most legal rights enshrined in national constitutions are framed to be inviolable but arguably not all of them are attached to inherent properties of persons, and vice versa; the same thing may be said about a number of rights under the International Covenant on Economic, Social and Cultural Rights.

For that matter, some conceptions of ‘aristocratic dignity’ are best placed under the category of inherent dignity (and perhaps inviolable dignity) rather than to ‘aspirational dignity’- unlike what Schroeder would have us consider it to be. Aristocratic ranking within the human species, as a matter of historical fact, was established as if it was a perfect reflection of the natural order of things. Moreover, the dignity invested with the superior rank is defended as inviolable to the extent that the supposed hierarchical scheme of things is foundational to the normative moral order. Any society, pastime or present or imaginary, which has established caste systems of one type or another, defends its claim for differential moral status by resorting to a fitting natural law theory. In contemporary post-metaphysical value system, this obsolete aristocratic hierarchy commands little normative appeal. In any case, the dignity accorded to the highest caste is by definition supposed to be considered as inherent to their person. Also the respect that their dignity allegedly commands would, by the same reasoning, be inviolable.

It may not be accurate to say that aristocratic dignity accords unequal status to persons, simply because it discriminates some class of people from others; rather, it narrows down the category of persons only to those who nature allegedly graces with superior attributes and are entitled to full personhood by that count. Apologists of aristocratic moral systems defend the legitimacy of what is (the status-quo) to the degree to which it reflects what ought to be, i.e, whatever they believe is given by natural design. The foundation of aristocratic moral status is, therefore, both purportedly inherent to the human person and also informed by a policy of equality of respect.

⁴⁴ For an interesting distinction along the lines I sketched here, see Christine M. Korsgaard "Two Distinctions in Goodness" *The Philosophical Review*, 92: 2 (April 1983): 169-195

That being said, one can now easily discern an essential congruence between ‘aristocratic dignity’ and the religious temperament that governs the traditional Catholic conception of dignity. What does this realization help in terms of refuting Schroeder's claim? Now, once aristocratic dignity promoted to the first category, we may have a more coherent basis of distinction. Interestingly, with the introduction of this subtle change, the perceived tension between the two categories of dignity- namely inherent (or inviolable) and aspirational dignity- evidently evaporates. How so?

There is one suggestive way of harmonizing the two categories of dignity, without losing sight of the specific foundational issue in question. I would like to, specifically, bring to attention a conceptual framework through which we may reconcile different meanings to dignity, while still maintaining that foundational issues for human rights is the domain of the normative framework within which inviolable dignity can be found. Virtue or character based accounts of dignity are not central to a normative system that constitutes the sort of moral prescriptions human rights presumably envelop. Linking dignity to virtue and merit or assigning it in accordance with comportment abilities would exclude a significant number of human beings, hence, these accounts, Schroeder reckons, “have no place in discussions about human rights.”

I can see the force of Schroeder's argument; nonetheless, I disagree with her for two reasons. Firstly, there is no reason to dispense with aspirational dignity in discussions about human rights even if "inviolable dignity" were proven to successfully in providing us with justificatory basis for human rights. And secondly, aspirational dignity is not necessarily detached from inviolable dignity, instead, a justificatory role to human dignity in the human rights discourse will inevitably smuggle aspirational dignity with it.

Aspirational dignity could still be argued to play a pivotal, though not foundational, role in the constitution of rights.⁴⁵ For human rights to be of any significant moral function, setting aside, for now, what might justify them, they ought to be attached to “our ability to make these rights serve our own

⁴⁵ In exercising our rights, a capacity (and virtue) for moral self-restraint is a necessary ingredient that a person with dignity should possess. Dignity viewed as self-control balances compulsive, obsessive and unrestrained claiming of a bumptious person with a passive acceptance of violations of rights by a despondent person. Michael J. Meyer developed a brilliant account of this view in his article “Dignity, Rights and Self-control” *Ethics*, Vol. 99, No. 3 (Apr., 1989): 520-534 He writes: “While having and exercising certain rights is important to our dignity as human beings, what we commonly regard as essential to human dignity would not be explained even if we were to delineate all of the relevant rights and the particular ways in which each of them expresses or protects human dignity.” at p. 521

ends”, which in turn require a minimal capacity for self-control. Michael J. Meyer advances this view, for he contends: “[t]hough human rights do perform a moral function (the moral function of obliging others to respect us by way of respecting some of our most basic claims), what makes their function moral is the fact of the human capacity for authentic self-control.”⁴⁶ Human rights, on his account, perform two functions: (a) they oblige others to respect us, and (b) the fact of having them makes possible for authentic self-control. Each of the two components of the moral function that human rights perform correspond with the two distinct but complementary notions of human dignity- the moral function of constraining others corresponds with inviolable dignity and the latter (namely, making up for a morally appropriate use of their obliging nature by providing the opportunity for authentic self-control) by aspirational dignity.

It may be true that inherent/inviolable dignity and aspirational dignity are different limbs of the same conceptual framework; but I see nothing troubling in that, much less a fundamental tension between the two. Furthermore, one may declare with Ronald Dworkin that the inherent/aspirational distinction in dignity perfectly matches with the distinction and unity between the 'ethical and the 'moral', as championed quite prominently in his latest book—*Justice for Hedgehogs*. Aspirational dignity reflects one’s ethical responsibilities for "living well" while inherent dignity captures the essence of morality, of what we fundamentally owe to each other, which together make up a unified system of values.⁴⁷ According to Dworkin, dignity is attached to two ethical principles: self-respect, which requires taking seriously the objective importance of one’s life; and authenticity, i.e., taking personal responsibility for creating a life according to one’s own coherent narrative on what counts as success in life.⁴⁸ These two principles of dignity, on the one hand guide our ethical life by instructing us to live well through the pursuit of a coherent yet objectively valuable path in life, and on the other hand “elucidate the rights

⁴⁶ Michael J. Meyer "Dignity, Rights and Self-Control" *Ethics*, 99:3: (Apr., 1989): 520-534, at p. 534

⁴⁷ Ronald Dworkin *Justice for Hedgehogs* (Cambridge, MA, Harvard University Press, 2011). The dichotomy between the ethical and the moral, he thinks, is bridged by the notion of human dignity- without which our lives would simply be blinks of duration.

⁴⁸ Meticulously discussed in Kenneth W. Simons “Dworkin’s Two Principles of Dignity: An Unsatisfactory Nonconsequentialist Account of Interpersonal Moral Duties”
<http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SIMONS.pdf>

individuals have against their political community” within the ambit of interpersonal moral duties we owe to each other. Dworkin puts forth an account of dignity which unifies the normative demands of ethical responsibility with categorical moral duties of respect for persons. He writes,

Each person must take his own life seriously: he must accept that it is a matter of importance that his life be a successful performance rather than a wasted opportunity. I’m talking about dignity. It’s a term overused by politicians, but any moral theory worth its salt needs to proceed from it...[secondly], [e]ach person has a special, personal responsibility for identifying what counts as success in his own life; he has a personal responsibility to create that life through a coherent narrative or style that he himself endorses. Together the two principles offer a conception of human dignity: dignity requires self-respect and authenticity.⁴⁹

The ethical and the moral realms are analytically distinct, the same goes for inviolable and aspirational dignity, and yet when expressed in normative terms both reinforce one other. According to Dworkin, the principle of self-respect is not in itself a moral claim: it denotes an ethical imperative which requires that people recognize the objective importance that the live well. Drawing from Stephen Darwall's discussion on recognition respect—"the respect we must show people just out of recognition of their status as people", Dworkin states that "[t]he self-respect that dignity demands is recognition, not appraisal [or aspirational], respect."⁵⁰ His project seeks to connect the two principles of dignity with moral principles including the mainstream view that each person's life has an equal intrinsic worth. For "[i]n practice, the equal-worth principle is usually understood not as an ethical principle but as a moral principle about how people must be treated. It insists that all human lives are inviolable and that no one should be treated as if his life were less important than anyone else's."⁵¹ "Any moral theory worth its salt" ought to, therefore, connect the two principles of dignity with the above described and other moral principles, and construct a unified value theory, exclaims Dworkin in the spirit of the hedgehog.⁵²

⁴⁹ Dworkin, *Justice for Hedgehogs*, 203-204

⁵⁰ *Justice for Hedgehogs*, 205-6

⁵¹ *Justice for Hedgehogs*, 205

⁵² At the very outset of *Justice for Hedgehogs*, Dworkin explains the origins of the rather unusual title of the book. It refers to an expression from ancient Greek poet, Archilochus, that Isaiah Berlin made famous in his essay "The Hedgehog and the Fox", which goes: 'The fox knows many things, but the hedgehog knows one big thing.' Later Berlin downplays the significance of his essay with these modest words: "I never meant it very seriously. I meant it as a kind of enjoyable intellectual game but it was taken seriously. Every classification throws light on something." Jahanbegloo, Ramin,

1.2.6 Does Grounding Human Rights in Human Dignity Engender a Paradox?

In so far as they are claim rights and regardless of their content, basic human rights “have their home in normative systems with constructed personae.”⁵³ When uncertain about which conditions obtain to invigorate the ‘moral personae’ that human rights are meant to protect or promote, we will remain ambivalent about what human rights there are. The role of human dignity as a possible justificatory basis for human rights has to do with meeting the conditions under which human right-claims are valid. Thus, as a justificatory basis for human rights, dignity ought to define what constitutes as well as vindicates the common ‘human moral personae’. And the question is: under which conditions does a dignity based justification of human rights lead to a paradox?

One who advances the orthodox claim that human dignity does a justificatory work in the constitution of human rights will inevitably face a justification paradox, declares Schroeder. According to her, here's how the paradox materializes: if we wish to advance a secular conception of human dignity, then we should abandon the hope for attributing human rights to all human beings by virtue of their humanity. Whereas, “[i]f we want to use dignity as a foundation for human rights and accord all human beings human rights, then only the Traditional Catholic understanding of dignity is appropriate”.⁵⁴ Without reference to religious authority, she argues, human dignity loses its unique persuasion- which relates to the pretence that it invariably protects all human beings regardless of birth, or physical and mental capacity. If one, however, wants to rid dignity off problematic religious or metaphysical underpinnings, one must at the same time be ready to abandon the idea that *all* human beings possess dignity in virtue of their humanity (and rest content with Kant's conception of "the dignity of persons" that excludes a significant number of human beings who are not capable of moral agency).

Conversations with Isaiah Berlin (London, 2000) p. 188.

Dworkin regards himself as a hedgehog for he believes that “[v]alue is one big thing. The truth about living well and being good and what is wonderful is not only coherent but mutually supporting: what we think about any one of these must stand up, eventually, to any argument we find compelling about the rest.” (*Justice for Hedgehogs*, 1)

⁵³ Leif Wenar (January 2013) The Nature of Claim-Rights. *Ethics*, 123: 2, *Symposium on Rights and the Direction of Duties*: 202-229, at p. 229

⁵⁴ Doris Schroeder “*Human Rights and Human Dignity: An Appeal to Separate the Conjoined Twins*”, 332

I think Schroeder's claim rests on a false dichotomy. For the sake of argument, we may even discount Kantian dignity as implausible, but still there is no reason to suppose that only one other alternative conception is appropriate as a possible foundation for human rights- namely the traditional Catholic conception of dignity or a similar conception with equivalent religious underpinning.

The concept of human dignity has undeniably been a subject of serious scholarship, despite its late resurgence in philosophical discourses, and one should not undermine the enormous contribution it has already made in this relatively late re-emergence in morality: for example, Jeremy Waldron advances a status conception of human dignity which he considers foundation-ish to human rights; Ronald Dworkin argues that the ethical conception of human dignity must at the same time confer moral purchase to dignity, by underscoring moral duties we owe to each other, including fundamental entitlements otherwise known as human rights; and finally, Stephen Darwall suggests that it is more plausible to conceive of dignity as a moral authority governing the most basic framework of interpersonal morality. Consequently, it is not true that the discourse on human dignity has lost its persuasion due to the fact that religion has lost its footing in contemporary moral theory. Dignity's recent currency in philosophical and legal reasoning merely states that we just have begun to tap into the enormous repository of ideas underneath its apparently messy surface. Even though Schroeder's bleak description about the current state of the discourse were accurate, that would not still warrant the urge to abandon the exploration of a possible dignitarian basis of human rights.

On a related issue, I beg to differ with Schroeder and other critics' wholesale approach to foundational issues. Universal attribution of human rights to all members of the human species does not necessarily sanction a wholesale purchase of one single foundational idea or principle. I suggest, we rather consider dignitarian foundation of human rights in light of foundational pluralism. After all, why should we think that human dignity is less relevant for the vindication of human rights unless it is defended as the sole normative foundation for the latter? Some human rights may turn out to be derived directly from dignity while others from autonomy or liberty or other moral values "without regard to the place those ideas have, in turn, in the analysis of dignity."⁵⁵ Moreover, consistent with our intuitive attachment of the concept with paradigmatic violations of human rights, dignity may be germane to some rights than to others. The talk of dignity violation often comes at the forefront when discussing

⁵⁵ Jeremy Waldron "Is Dignity the Foundation of Human Rights?" *New York University School of Law; Public Law and Legal Theory Research Paper Series*; Working Paper No. 12-73 (2013): 1-29, at p. 5

about torture or slavery or other instances of humiliating and dehumanizing treatments, in contrast to philosophical debates concerning the right to privacy, freedom of speech and expression, or the right to periodic holidays with pay.

I take it that, some human rights-claims enumerated under the Universal Declarations are not clearly inspired by dignity, and perhaps not derived from it. The idea of foundational pluralism that I alluded to has dual meanings: the first has to do with the understanding of foundations of human rights in more than one relevant sense, for which normative foundation or justification constitutes just one; the second is the idea that there can be a plurality of justificatory bases for human rights. I leave the rigorous exploration of the foundations of (moral) human rights to the next chapter.

1.3 Human Dignity as a Conversation Starter

In this primary chapter of my dissertation I did not expound a positive account of human dignity, I only tried to lay the groundwork for a successful defense of human dignity by undermining its detractors. Without indulging my readers with too much detail at the outset of my dissertation, I would, however, like to state some suggestive ways of advancing a positive thesis. As I have emphasized earlier, dignity's rich historical relation with political and social struggles of pastime and present is one rich source that should not be neglected by a normative theory of human dignity.

Women's movements and to a certain extent civil rights movements furnish good examples wherein the notion of human dignity govern their respective movements' normative core. The fight for the emancipation of women, in whichever form it presents itself, basically signifies the yearning for the recognition that women are equal and autonomous persons and that they ought not be treated as objects of sexual gratification or reproductive necessities, nor should social, political and public offices be deliberately designed to stand beyond their reach. Human dignity can be a unifying idea that summarizes and abbreviates specific moral demands that these movements have rallied behind. Demands for freedom, equal respect and for the right to decent living conditions are all encapsulated under the banner of women rights. Nonetheless, one needs a unifying narrative to underscore that those demands have a common normative core. And in principle, the idea of human dignity can consistently mean respect for the right to autonomy, the right to equality and the right for the procurement of goods necessary for living a decent and humane life. In societies in which subjugation of women and of minorities were not just limited to social norms and corresponding acts reflecting those norms but also

embedded in civil and political institutions, as it was clearly the case in the past and is still true today; and thus framing the struggle for such rights as a case for human dignity raises its moral profile, and rightly so. On the one hand, this task perfectly suits a familiar attribute of human dignity in public discourse- precisely that it is subversive; on the other hand, such framing captures dignity's normative essence. Even in the absence of adequate institutions of society or their inherent incapacity to effect the material existence of freedom and equality, one could still advance a claim for respect to one's dignity- which would in effect amount to making substantively identical claims as in the case of similar claims made in fairly decent societies. That is to say, there is a deeper substantive significance in structuring these protracted struggles for equality and freedom as struggles for respect for human dignity. And consequently, commitment to human dignity does not preclude embracing apparently conflicting goals (such as freedom, equality, and welfare) at the same time. Furthermore, the recourse to human dignity signifies that the refusal to grant basic rights to a segment of humanity on the basis of morally irrelevant factors implies the denial of their moral status.

Consider the following thought. There is an aspect of rights' violation that may not be sufficiently captured by the institutional language of rights. For instance, the proposition that torture engenders violation of the bodily integrity of persons is true, nonetheless incomplete. What principally manifests in torture is an abrogation of the victim's moral standing as a person whose life, liberty and the power to determine what happens to himself should never be under the total control of others. Similarly, the examples discussed earlier, which have to do with the illustration of dignity's historical deployment as a subversive idea, suggest that there is more to appeal to respect for dignity than respect for a given set of rights. All the rights for the recognition of which those historical struggles for equality were fought reveal a common thread, precisely that the victims were denied their rights and entitlements on the basis of some identifiable morally irrelevant characteristics such as gender, sexual orientation, skin color, clan or ethnicity, political or religious persuasion. That often results in humiliating the victims by making their debasement evident to them through gestures of one sort or another. I believe there is a point at which rights violations devolve into humiliation. A number of factors may contribute to rights violations' descent into humiliation. It seems to me that, the moral outrage against inherently unjust institutions is primarily directed at their tendency to leave their victims justifiably feel indignant.

It is obvious that rights unwittingly violated are rights violations nonetheless, as in the case of an accident committed by a drunk driver. But in the above mentioned historical examples, the rationale

explicitly or implicitly used by the perpetrators adds additional normative dimension to the accompanying violation of rights.⁵⁶ Despite obvious similarities, there is a clear distinction between what I meant by 'the rationale' that perpetrators deploy and variations of intent in the legal sense; although, I must admit that the distinction is deceptively difficult to discern. For that matter, there is a parallel distinction in moral philosophy where one may speak of infringements as opposed to violations of rights- a distinction usually discussed in conjunction with the philosophical analysis of the famous doctrine of double effect.⁵⁷

In the context of the examples mentioned earlier, the intent to harm is already established and that questions of culpability are already settled. But my point is, ex-post determination of intent there is still another factor in play which does have a direct bearing on the stringency of the moral offense. That is what I call "morally *proactive* attitudes" that govern the internal moral-psychological reasoning at play illustrating why moral violators feel justified in treating others in certain disparaging ways. My stipulation of 'morally *proactive* attitudes' is reminiscent of P. F. Strawson's conception of "participant reactive attitudes" which he defined as moral "attitudes belonging to involvement or participation with

⁵⁶ This notion is quite familiar to legal practitioners, as in criminal law for example where there is a clear guideline for determining the extent of guilt according to intent and conscious understanding of the situation by the alleged perpetrator/s. But beyond the parameters of intent and conscious awareness of the state of affair, criminal law is not much interested in the professed reasons for action by the alleged violator/s except to employ it as an indicator for the level of culpability. The test of intention vary in subtleties from one legal system/tradition to another, but there are three variables that commonly figure in all: malice (and wilful intention), recklessness and negligence.

⁵⁷ Thomas Aquinas is often credited for the initial formulation of the doctrine of double effect, specifically in the *Summa Theologica* (II-II, Qu. 64, Art. 7) where he outlines his view on the permissibility of self-defense. From the general premise that "[n]othing hinders one act from having two effects, only one of which is intended, while the other is beside the intention...", he infers that foreseen but unintended harms are morally permissible, as long as the harm that they cause is not blown out of proportion, and in so far as they are instigated as a side-effect of self-defense (the intended effect). Later refinements of the principle emphasize the importance of distinguishing the act of causing a grave harm as a side-effect with causing harm as a means of pursuing a justified end such as self-defense. Incidental yet unintended harm remains within the boundaries of the morally permissible, while the principle prohibits instrumentally causing harm for the sake of bringing about a good effect. Which means I am not allowed to sneak in one's house and kill the person who bullied me for a duel, for frivolous reasons, the night before the duel is scheduled to take place, even though I never intend to partake in it or even actively loath the prospect of it happening nor had any intention to harm that person, even though he was an excellent expert shooter but I know not my way around guns, and even though I knew for sure the following day he'll stop at nothing to make that duel happen.

Judith Jarvis Thomson draws on the doctrine of double effect to establish her distinctive account of the dichotomy between infringement and violations of rights, which evidently proved central to many of the controversies in contemporary rights theory. See the chapter-"Rights: What They Are" from her book *The Realm of Rights* (Cambridge, M.A.: Harvard University Press, 1990)

others in inter-personal human relationships", attitudes include resentment, blame, anger, guilt and feeling indignant.⁵⁸ Analogously, '*proactive* attitudes' consist not in the moral attitudes that victims display but in the corresponding attitudes that the culprits had at their disposal either as the underlying motive or as a tool for rationalizing their actions. A sense of superiority usually occasioned by a degrading view of others, as reflected in covert and overt racism, actions designed to express contempt and corrosive disdain of others as in the well publicized case of torture and prisoner abuse by US military personnel in Abu Ghraib, scornful parading of prisoners before jeering crowds in Guantanamo bay, and the subsequent taking of pride and gloating at their humiliation. It also includes active refusal to acknowledge the presence of others and the moral space/standing they occupy by pretending as if they are invisible or look through them as if transparent. These examples of '*proactive* attitudes' demonstrate that the moral pervasiveness of some right violations go beyond the mere intention to harm. To be clear, what I called participant *proactive* attitudes are also constituted by positive dispositions, in the same way as Strawson's 'participant reactive attitudes' do. As a morally '*proactive* attitude' to dignify may mean to respect, venerate, regard and defer to our fellow humans. So to treat people in the manner worthy of their human dignity may involve displaying these positive '*proactive* attitudes', for which respecting the basic rights of others is possibly symptomatic of the proper attitude one has, or ought to have, with regard to them.

And if the above thoughts do not succeed in shifting the trajectory of the current philosophical discourse on human dignity, to the very least, I believe they illustrate the need to not give up on an idea of enormous significance as human dignity.

⁵⁸ P. F. Strawson "Freedom and Resentment" in Strawson, *Freedom and Resentment and Other Essays* (London: Methuen & Co., 1974)

Chapter 2

Human Dignity as (a)the Foundation of Moral Rights

2.1 Human dignity in the Human Rights Discourse

Human dignity is established as a fundamental principle to virtually all human rights declarations, conventions, protocols and international court statutes since World War II. For instance, the opening preambulatory statement of UDHR tells us that "the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Whereas, expanding on the preamble, Article 1 of the same declaration underscores the inherent nature of our rights and dignity proclaiming that "[a]ll human beings are born free and equal in dignity." What it says is that equal freedom and dignity are inherent endowments or birthrights of the human person for the recognition of which this declaration is enacted, not something that came into being simply due to legal prescription or will cease to exist when no longer recognized by a given legal system. This notion that dignity and rights are enduring basically an egalitarian essence which basically prescribes that all people are entitled to be accorded the same basic rights regardless of accidents of birth and social class, and that eventually became the most salient feature of the human rights movement.

Although human dignity figures prominently in the UDHR, its precise role has not been clearly stipulated; it is only later that the International Covenant on Civil and Political Rights of 1966 has envisaged a direct and fundamental connection between rights and dignity. It addresses the foundational question for the rights listed under the covenant, declaring that they "derive from the inherent dignity of the human person." Moreover, in many of the subsequent instruments, the expression "respect for the inherent dignity of the human person" evidently figures in various capacities, including as an overarching legal norm, guiding principle or as a foundation or basis for human rights claims.¹

¹ For the discussion on the role of human dignity in the legal context, see Oscar Schachter "Human Dignity as a Normative Concept" *The American Journal of the International Law*, 77: 4 (Oct., 1983): 848-854

Certainly, human dignity has been given significant attention in the human rights law. Supreme court justices sometimes make recourse to human dignity in some high profile judicial reviews regarding the constitutionality of certain controversial pieces of legislation, subsequently demonstrating the extent to which human dignity is firmly entrenched in the legal discourse. But it is only recently that moral philosophers have undertaken a concerted attempt at providing a philosophical analysis of the idea of human rights and, in particular, exploring whether a foundational relationship obtains between human dignity and (moral) human rights has been their preoccupation of late. Although philosophers who take human rights seriously do usually mention declarations of human rights, most, however, do take issue with the extensive list of human rights contained in those human rights covenants. They recognize the political dimension to the negotiations leading up to the drafting and subsequent adoption of the human rights instruments; it is, therefore, easy to see that some philosophers' skepticism and uneasiness towards the given list of human rights provided by those documents is partly driven by the fact that human rights practice did not stem from a unified substantive theory. Some, for instance, are doubtful whether economic and social rights are genuine human rights, in terms of whether the claims they have on us correspond to an adequate moral title; for that reason, they often refer to such claims as "manifesto rights"- used almost unanimously as a pejorative term.

In any case, most philosophers prefer a more constrained list of human rights for only a handful of those rights command near universal agreement, testament to the fact that moral and political philosophers fiercely disagree about the nature of human rights. The idea of human rights is a very peculiar moral category and it is deceptively unclear whether human rights comprise a subset of moral rights, or whether we should take them in the first instance as legal rights towards which moral standards do apply, or should we, with Jürgen Habermas, declare that human rights have a “moral-legal Janus face”.²

² For a defense of human rights as a subset of moral rights, see Feinberg, Joel. (1970), “The Nature and Value of Rights,” *Journal of Value Enquiry*, 4: 243-257; *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973). For Jeremy Waldron, both human rights and human dignity are best taken in the first instance as legal concepts; see Waldron, Jeremy. *Dignity, Rank and Rights*; Meir Dan-Cohen (Edn.) (Oxford: Oxford University Press, 2012). On Habermas’ view on the role of human dignity in human rights discourse, see his “The Concept of Human Dignity and the Realistic Utopia of Human Rights” *Metaphilosophy*, 41: 4 (July 2010): 464-480

Of course, there are others who defended a practical (or what has crudely been referred to as a political) conception of human rights- according to which the currently prevailing human rights regime has presumably rendered the search for foundations of human right-claims not only obsolete but also grossly misguided. In this context, foundational issues do not naturally arise because this approach to human rights presumes that human rights practice has already conferred the requisite validity that a foundational account is supposed to provide. This so called "political conception" draws heavily on John Rawls' conception of justice as he studiously revisited in his later works- *Political Liberalism* and *The Law of Peoples*.³ In his later works Rawls' concern was in finding plausible ways of integrating human rights claims into a reasonable *Law of Peoples* (which governs the relationship between "peoples" as autonomous political entities) independently of any recourse to comprehensive philosophical doctrines. His theoretical approach is, therefore, devised to sidestep disputes concerning the foundations of human rights, than to resolving them.

Although Rawls's view of human rights as international standards involves no direct critique of deep foundational accounts or projects "that approach human rights through the analysis of human dignity or through a theory of natural rights", such a critique is rather implicit in the basic argumentative structure of his conceptual framework; "with its rejection of appeals to "comprehensive" moral views as foundations for a theory of justice. The critique does not, however... take the form of real skepticism about foundational projects in value theory."⁴ Some, however, have expanded on Rawls' position in order to bring it to bear a more direct critique of deep foundational projects. Charles Beitz advanced what could be taken as an extension to Rawls' view when in his recent book- *The Idea of Human Rights*- he mounts a direct critique towards naturalistic conceptions of human rights, including theories that conceptualize human rights through the analysis of human dignity.⁵

³ John Rawls, *Political Liberalism* (New York: Colombia University Press, 1993); *The Law of Peoples: With, The Idea of Public Reason Revisited* (Cambridge, M.A.: Harvard University Press, 2001)

⁴ A. John Simmons, "Human Rights, Natural Rights and Human Dignity" in Rowan Cruft, et.al (eds.) *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015): 138-152, at p. 146 In the same passage, Simmons further stated that "Rawls famously denies that the arguments in *Political Liberalism* (and, by implication, the subsequent arguments in *The Law of Peoples*) rest on such skepticism" about foundations in value theory. John Rawls, *Political Liberalism*, 62-63

⁵ Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009). Similarly, Joseph Raz's defense of a functional/political approach exhibits marked similarities to Beitz's critique of foundational projects. In a suggestive article by the title "Human Rights Without Foundations", Raz argues that the role of human rights claims is to set limits to the state

This is as far as I can go with sketching different approaches at human rights theorizing. For it is not the objective of this chapter to provide a comprehensive account of human rights or to tackle head-on fundamental points of dispute amongst human rights scholars; instead, this chapter is concerned primarily with the question what if, and in what sense, human dignity can be a valid foundation of human rights.

That being said, I think it appropriate to submit my dispute with the so-called political conception of human rights. The essence of my claim is that one specific version of the political conception, whose core thesis is based on skepticism towards foundational projects in value theory, is untenable. Evidently, all versions of the political conception have a positivistic outlook of human rights, but not all of them reject the idea of a foundation in value theory. One may with Alan Gewirth formulate the basic claim of this conception: "For some person A to have a [human] right to X in this sense means that there is social recognition and effectual legal protection of A's having or doing X."⁶ But the concept of a human right I subscribe to is precisely what Gewirth aptly characterized as "*normatively moral*." It roughly takes the following form: for A to have a human right to X in this *normatively moral* sense means there is an underlying moral reason for A's being protected in the having or doing of X, as something that's due to him by a moral argument, even if such protection is in fact lacking in terms of social recognition and effective legal protection. In other words, the statement that a person has a human right to X in the normative moral sense cannot be falsified by the fact that in some places on earth, at present or in the foreseeable future, there exists neither the social recognition nor an established legal practice granting that the person is entitled to X.

To be clear, my critique of the political conception has no bearing on the legal validity of human rights but only in so far as the talk of validity presupposes a concept of human rights regarded as normatively moral. My view is that an adequate defense of the moral significance of human rights does, in fact, require a search for deep foundations, not something reducible to a historical account of the human

sovereignty-otherwise an established norm deeply engrained in international law and politics. See Raz, Joseph "Human Rights Without Foundations" in Samantha Besson and John Tasioulas (eds.) *The Philosophy of International Law* (Oxford: Oxford University Press, 2010)

⁶ Alan Gewirth, "Dignity as the Basis of Rights" in Michael J. Meyer and William A. Parent (eds.) *The Constitution of Rights: Human Dignity and American Values* (Ithaca and London: Cornell University Press, 1992): 10-28, at p. 14

rights practice. This is not to categorically deny human rights practice some normative force but only to emphasize that a sound conception of human rights requires an adequate account of their foundation.

It is important to note that a particular way of conceiving human rights is implicit in my critique of foundational skepticism. In particular, I draw on a philosophical point of view that many prominent figures subscribe to whose underlying thesis is that human rights are essentially, perhaps not exclusively, moral rights. With the exception of a few outliers, the vast majority of philosophers concur that human rights are distinct s of moral rights.

One may, however, find this characterization of human rights as moral rights confusing or at best insufficiently informative. Feinberg offers a concise but precise description of moral rights; he says, "the term 'moral rights' can be applied to all rights that are held to exist prior to, or independently of, any legal or institutional rules."⁷ This is simply to say that the norms that constitute moral rights are not established by appeal to some authority but by a moral argument. In respect to human rights, Feinberg further declares: "I shall define 'human rights' to be generally moral rights of a fundamentally important kind held equally by all human beings, unconditionally and unalterably."⁸ In other words, "human rights can exist only if in some sense moral norms exist."⁹ I think, some of the suspicion towards characterizing human rights as moral rights is due to the fact that "[t]he word 'moral' seems to be doing much of the same work in this context that the word 'natural' use to do. Describing rights as natural implied that they were not conventional or artificial in the sense that legal rights are, and the same is implied by describing human rights as moral rights."¹⁰ But the semantics of "moral rights" does, indeed, have explanatory advantage over the other for it is more sanitized from problematic metaphysical implications that the term "natural" appears to import.

⁷ Feinberg, *Social Philosophy*, 84

⁸ Feinberg, *Social Philosophy*, 85

⁹ Rex Martin and James W. Nickel "Recent Work on the Concept of Rights" in C.L. Ten (edn.) *Theories of Rights* (Aldershot: Ashgate Publishers, 2006): 1-16 at p. 11 But Feinberg has some concerns over considering all human rights as natural rights, without qualification. He writes, "[a]ll of the rights that have been characterized as 'natural rights' in the leading manifestos can also be called human rights, but, as I shall be using the terms, not all human rights are also by definition natural rights. The theory of natural rights asserts not only that there are certain human rights, but also that these rights have certain further epistemic properties and certain metaphysical status. In respect to questions of moral ontology and moral epistemology, the theory of human rights is neutral." Feinberg, *Social Philosophy*, 85

¹⁰ Rex Martin and James W. Nickel "Recent Work on the Concept of Rights", 11

In merely describing human rights as moral rights, one must note that, what sort of moral norms constitute human rights is not entirely settled, since critical morality is composed of competing normative frameworks wherein each conception of morality imposes its own standard of what is moral and more importantly its standard of what constitutes a right. It might be claimed, for the sake of argument, that “it is possible for moral, and hence human, rights to exist even if moral norms are [were] conventional or are relative to culture, *but* if human rights are to serve their role as international standards of political criticism then such a conventional morality would have to include some norms that are accepted worldwide.”¹¹ Nevertheless, since we usually insist, often with valid reasons, on deploying moral norms as universal normative standards, the inadequacy of conventional morality for giving birth to truly universal human rights claims eventually becomes apparent. For reasons of space and adequacy, I shall not put forward an elaborate argument why I think we must overlook conventional morality from our considerations of a possible theoretical space within which the notion of human rights could emerge. The limitations of conventionality is one of the fairly established notions in meta-ethics and normative-moral theory and it, therefore, needs no further elaboration.

And if we agree on the supposition that human rights exist only if moral norms exist, and can further assert that moral norms are in some fundamental sense distinct from conventional norms of any kind, then we are effectively within the domain of critical morality in which the ‘moral’ in moral rights connotes something equivalent to what the word ‘natural’ used to mean. Furthermore, I believe, the conceptual space made available by critical morality designates the theoretical framework within which the analysis of human dignity would have significant implication for the understanding of the grounds of human rights.

Even within the framework of the legal discourse on human rights some scholars acknowledge the moral underpinnings of those familiar references to human dignity in major international declarations of human rights. In his brief but seminal article, a prominent legal scholar Oscar Schachter insists that the invocation of human dignity in positive law “should be understood in a philosophical rather than historical sense.” Although the idea of human dignity may reflect historically existing notions of freedom and equality without generating or, at any rate, justifying them, he contends, “as a philosophical statement, the proposition that rights derive from the inherent dignity of the human

¹¹ Rex Martin and James W. Nickel *Recent Work on the Concept of Rights*, 11; emphasis mine.

person...implies that rights are not derived from the state or any other external authority.”¹² Declarations of human rights could be seen as attempts at making the concept of human dignity operational, in particular, as a practical response to unspeakable atrocities committed during the Second World War. Similarly, Schachter maintains that human dignity reflects that underlying “suprapositive” element underlying positive law’s recognition of human rights claims as universal, inalienable, and non-forfeitable, “not simply a matter of our having decided to create positive law in this form”.¹³ It seems to me that Schachter’s characterization of human dignity as an underlying moral content of human rights claims is an earlier attempt at making sense of the all too familiar references to human dignity in human rights Law and practice. Moral philosophers, on the other hand, need not have to undermine the notion that contemporary human rights movements are partly embodiments of political projects that aspire to install international norms for the protection of people and consequently “promote international peace and security.” Philosophical analyses of human rights may be seen as responses to this international effort at codifying legal norms and standards. I would, with Karl Wellman, say that “one cannot fully understand either the reaffirmation of human rights in the United Nations Charter or the continuing human rights movement without examining the relevance of human rights theories of noninstitutional moral human rights.”¹⁴

Analogous to human dignity’s prominence in the legal discourse regarding human rights, those moral and political philosophers who have taken seriously the significance of clarifying the concept have predominantly conceived it within the “rights approach” to morality. The following passage from Ronald Dworkin reflects an outlook widely shared among philosophers that affirms the significance of human dignity in the philosophical analysis of rights. In *Taking Rights Seriously*, Dworkin declares:

¹² Schachter, op.cit., p. 853 Without doubt, the horrors of the Holocaust and the ensuing global outcry that it triggered have made it imperative for an international legal regime to prevent such indignities from ever happening again. Likewise, drafters of the Universal Declaration of Human Rights saw these horrors as violations of human dignity. They emphasized that the point of declaration of universal human rights, among other things, is to ensure a dignified existence for all members of the human family.

¹³ Jeremy Waldron reads Schachter as invoking something akin to Kelsenian idea of the “*grundnorm*”- that would mean “a norm regarding human dignity might be an ultimate source for the legitimacy of human rights norms”. Jeremy Waldron, “Is Dignity the Foundation of Human Rights?” in Rowan Cruft, et.al (eds.) *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015) pp. 117-137, at p. 127

¹⁴ Carl Wellman, *The Moral Dimensions of Human Rights* (Oxford: Oxford University Press, 2011), 7

“Anyone who professes to take rights seriously, and who praises our government for respecting them, must have some sense of what that point is. He must accept, at the minimum, one or both of two important ideas. The first is the vague but powerful idea of human dignity. This idea, associated with Kant, but defended by philosophers of different schools, supposes that there are ways of treating a man that are inconsistent with recognizing him as a full member of the human community, and holds that such treatment is profoundly unjust. The second is the more familiar idea of political equality. This supposes that the weaker members of a political community are entitled to the same concern and respect of their government as the more powerful members have secured for themselves, so that if some men have freedom of decision whatever the effect on the general good, then all men must have the same freedom.”¹⁵

The main takeaway for me is that Dworkin insists anyone who takes rights seriously must at the same time hold that we ought to “treat violations of dignity and equality as special moral crimes, beyond the reach of ordinary utilitarian justification.”¹⁶ The point he wishes to convey can be summed up accordingly: no legitimate basis for the discourse on rights exists in the absence of recourse to human dignity and political equality. This clearly tells us that the idea of human dignity is fundamental (or in some sense foundational) to the understanding of rights, but at this stage the full implication of this characterization is not yet clear.

If dignity is to be treated as foundational to moral (human) rights, we must first discern what that foundational role entails or amounts to. Foundation can be predicated in different ways, as there is no unified sense in which one concept is considered to be foundational to another. Human dignity may be considered as basic or “foundational” to rights in many distinct yet equally meaningful ways; one way of conceiving human dignity as a foundation could be in the sense in which Dworkin describes. That of course is different from recognizing human dignity as the “source” of human rights, implying that the discourse on human rights is derived from or grew out of the discourse on human dignity which, in turn, is distinct from the thesis that dignity is the source of validity or justification of specific human rights claims, and again justification is distinct from the notion that respect for dignity buttresses

¹⁵ Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977): 198-199

¹⁶ Dworkin, “*Taking Rights Seriously*”, 199 supranote 1

respect for human rights. These are some of the many ways of conceiving human dignity as foundational to human rights, provided that human rights are conceived simply as basic moral rights.

In a short while, I will return to the exploration of different meanings to the notion of foundation in the context of human rights, but first I should like to quickly discuss three closely connected assertions that might be, and often are, confused with the claim that human dignity holds the attribute of being foundational to human rights.

2.2 Two Distinctions and one Common Misconception about a Foundational Thesis

The consideration that human dignity is a foundation of human rights must be distinguished from (a) a feature that is common to all human rights and (b) from the thesis that dignity consist in the possession of human rights. Moreover, (c) we must take due diligence not to conflate every foundational account with Foundationalism according to which a single overarching value underlies or vindicates moral (human) rights. Jeremy Waldron brings the first distinction to attention, and with regard to (c), John Tasioulas presents an interesting distinction between the defense of dignity as a foundation and the orthodoxy of Foundationalism.

In the following I shall explore the first two distinctions and demonstrate how they differ from a foundational account proper. Certainly, some misconceptions about the foundation of human rights can be attributed to the rather complex nature of rights, such that the concept of a right cannot be pinned down with a simplistic account of its content and foundation. Nevertheless, it is quite clear that a right's claim is posited in a distinctively demanding normative frame. The moral demand that a right's claim generates is supposedly stringent that it functions as a moral side constraint on the action and behavior of individuals who bear corresponding duties, since the point of a right's claim "is for the securing not just the adventitious satisfaction of the norm."¹⁷ Human rights claims, in particular, are thought to be resistant to trade-offs primarily against other norms or moral categories and also against other sorts of rights. And, since now we are talking about human rights in particular—"rights that all human beings

¹⁷ Jeremy Waldron, "Is Dignity the Foundation of Human Rights?" in Rowan Cruft, et.al (eds.) *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015) : 117-137, at p. 132

possess simply in virtue of their humanity,"¹⁸ we are at the same time talking about basic universal equality. In other words, if it is true that one person has these rights, it means everyone has them. Nevertheless, from the premise that human rights are to be held universally by all human beings, "there is no [valid] implication that the duties must also be universal, i.e., that all persons bear the duties correlative to the human rights enjoyed by all."¹⁹

In any case, one of the above noted common characteristics of human rights, namely, that they reflect moral equality between human beings, can be obtained by conceptual analysis; whereas, the notion that human rights are characterized by their being resistant to trade-offs could be established by a substantive theory. These are but considerations as to what distinctively characterizes human rights in contrast to other type of rights and norms. However, the fact of being constitutive to human rights may lead some into mistaking these common features for foundations. For instance, just because human rights signify moral equality does not mean that moral equality is, therefore, the foundation of rights.

In all fairness, it is not easy to delineate foundational elements out of all the constitutive features of human rights. For, when examined "with the eye of a pedant", what may be considered constitutive to (moral) human rights encompasses not just their common characteristics and the adequacy conditions for something to be qualified as a human right, it also appears to include the consideration of their grounding. In other words, what concerns the basic constitution of such rights broadly captures what makes something a (moral) human right, including the foundations for such rights as well as the best method of determining their content. These distinctions are so subtle and abstruse that they are often confused in rights theorizing, especially significant is the blurred distinction between what reasons one might have in believing that X is a human right and what justifies human rights such as X. Despite seemingly intractable confusions, the foundation of rights "is distinct from, although also related to, the epistemic one of finding reasons for believing that X is or is not a human right. One may have good reasons for such a belief without being in possession of an account of the foundations of human rights."²⁰

¹⁸ John Tasioulas, "On the Foundations of Human Rights" in Rowan Cruft, et.al (eds.) *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015) : 45-70, at p. 49

¹⁹ Tasioulas, "*On the Foundations of Human Rights*", 50

²⁰ Tasioulas, "*On the Foundations of Human Rights*", 45. I must admit that it is a tricky thing to separate the epistemic notion of having a sufficient reason to believe that X is a human rights claim from having at one's disposal a general

Certainly there are other distinctive features of moral rights that are also basic and presumably established by analysis but ought not to be equated with a foundational account. Rights serve a moral function; according to *choice theory*, the supposed moral function is to confer autonomy for the right holder over others in relation to their respective duties towards him/her. Whereas *interest theory* maintains that the point of having rights is to protect and promote the right-holder's interests or welfare. These two competing accounts of the point of rights do not establish the specific substance of a given right, although each may point towards a particular direction for delineating the content of rights by a substantive argument.

On *choice theory*, for example, regardless of whether the content of each particular right directly concerns liberty, the point of having rights is to grant autonomy to the right-holder over the behavior of the duty-bearer, such that the right holder can hold the latter accountable for infringement or may otherwise release him from duty at will. Analogously, what the *interest theory* asserts is that rights exist in order to protect and promote welfare, and that holds true even for a specific right to liberty. To claim that the point of rights is to confer autonomy for the right-holder is not to identify rights with autonomy or ground them in it, any more than theories that seek to define the *raison-d'être* of rights in terms of interests or welfare identify the content of rights with interests or can be taken as declaring that rights are grounded in interests.

Moreover, it is not uncommon for philosophers to declare that rights confer dignity and mandatory respect to all persons in virtue of being human. Nonetheless, a defense of human dignity as a foundation must not be conflated with an explication of the moral significance of having rights, at least not in the constrained sense in which "a foundation" is understood here in this chapter.

understanding of what grounds human rights. At the superficial level, a reasonable understanding of human rights may not require being in possession of a philosophical account of the foundations of human rights. No human rights activist or lawyer is required to present such an account, for she can make a convincing case following the dictates of the law by the letter or by interpretation thereof. However, at the deeper level having good reasons to believe X is a human right may require defining its adequate content. It would otherwise be useless to assert that X, say a human right to life, exists unless one also knows what it requires, permits and entitles. However, Carl Wellman propounds a positive account of the relationship between the content and grounds of rights, when he states that "[b]ecause the content of any right is determined by its grounds, the best method for defining any right will be shown by the best theory of the grounds of rights". Carl Wellman, *An Approach to Rights: Studies in the Philosophy of Law and Morals* (Dordrecht: Kluwer Academic Publishers, 1997) p. 36

Secondly, it has seldom been argued that human dignity consists in the possession of rights. This suggests that having rights is a necessary quality of being endowed with dignity. Jacques Maritain appears to suggest that having dignity is substantively equivalent to having rights, when he declared: "The dignity of the human person? The expression means nothing if it does not signify that by virtue of natural law, the human person has the right to be respected, it is the subject of rights, possesses rights."²¹ From this direction of fit, the precise relation between dignity and rights is quite unclear, except the simple logical inference that possessing rights is a necessary condition for having dignity. However, if one were to say that human dignity consists *just* in the possession of rights, that is, for a certain person A, if being possessed of human dignity merely duplicates the simple fact of him possessing rights, it may then be argued, and quite plausibly so, that reference to dignity is redundant.²²

Nevertheless, some important aspect of this relation may in some sense be utilized in ethical theory, for instance in clarifying how having rights in the empirical sense reinforces the person's sense of dignity or as a way of describing a causality suggesting that respect for rights fosters respect for human dignity. Undoubtedly, "there is a certain dignity in being the right holder." There is analytic point to this view, for instance, according to a version of this view familiarly defended by Joel Feinberg, the dignity of persons is recognized and fostered when in virtue of one's capacity to claim rights one can " 'stand up like men', to look others in the eye, and to feel in some fundamental way the equal of anyone."²³ On Feinberg's view, to think of a person as possessed of human dignity "simply is to think of him as a potential maker of claims", i.e., to recognize him as a right holder. This maybe one possible way of looking at the relation between dignity and rights, but, as Gewirth correctly pointed out, "it does not

²¹ Jacques Maritain, *The Rights of Man and Natural Law*, trans. D. Anselm (New York: Charles Scribner's Sons, 1951), 65

²² Owing to the most prominent place rights have in morality, one might observe that progress has been made on a number of areas concerning what a right is, while, in contrast, since dignity is relatively obscure and quite notoriously became a subject of deep and persistent controversy, appeals to dignity seems to bring forth a corrosive element into the human rights discourse. In light of that, skeptics may argue that at best dignity is a mere decorum, "or a place-holder to conceal intractable controversy" and, therefore, the discourse on human rights will be better off without this nebulous concept—human dignity. For a similar line of argument, see Doris Schroeder "Human Rights and human Dignity: An Appeal to Separate the Conjoined Twins" *Ethical Theory and Moral Practice*, 15: 3 pp. 323-335 Schroeder contends that even the most promising non-religious conception of human dignity, that is, the Kantian conception, cannot stand independently of his metaphysics of the 'neumenal world'. For that reason Kantian dignity is an epitome of a cul-de-sac.

²³ Joel Feinberg, "The Nature and Value of Rights," reprinted in his *Rights, Justice and the Bounds of Liberty* (Princeton: Princeton University Press, 1980), 151

show how human dignity is the *antecedent*, the justificatory basis or ground, of human rights, as against being either their equivalent or their consequent."²⁴

I should say that there are nuanced, non-redundant, versions of the notion that having dignity consists in the possession of (human) rights. On some accounts, human rights are regarded as specific instances of a normative concept of human dignity. Although it is not immediately evident whether the assertion that rights are constituents of human dignity includes or rather precludes an account of their foundation, it is however possible to argue that human dignity is in some sense foundational to a given set of human rights while, at the same time, some rights are conceived to flow directly from human dignity. For instance, analogous to the relation between a general rule and its specific instances, (moral) human rights-claims may similarly be conceived as specific instances of the general norm, i.e., human dignity. In the same vein, some conceptions of human dignity have emphatically claimed that dignity “is a status that *comprises* a given set of rights”²⁵; regarded as a status, human dignity also provides the rationale for “how the various rights, duties, and so on hang together, i.e., the underlying coherence of the package.”²⁶ Therefore, the notion that dignity consists in rights must not deter one from exploring whether dignity is in some sense foundational to some of the rights that it consists in. Nevertheless, in its oversimplified and generic version, the thought that human rights are specific constituents of human dignity does not in itself suggest or imply that those rights are grounded in dignity.²⁷

Thirdly, many scholars resist the thesis that human dignity grounds rights for a striking reason that a defense of foundation inevitably begets foundationalism. Foundationalism holds that a single notion (or norm) is *the* overarching ground for the possession of a certain moral category; applied to the specific context about rights, dignity Foundationalism vis-à-vis (moral) human rights implies that human dignity is exalted above all other norms as the sole ultimate basis for human rights claims, which in

²⁴ Alan Gewirth, *"Dignity as the Basis of Rights"*, 13 Gewirth identifies two concepts of rights that run in parallel to two correlating concepts of human dignity. One is empirical or positivist and the other is "*normatively moral*". On the empirical or positivist view, having rights is a function of social recognition or legal protection; while on the second view, to say there is a (human) right to X means there is a normative moral justification for X as a moral entitlement.

²⁵ Waldron, *"Is Dignity the Foundation of Human Rights?"*, 134

²⁶ Waldron, *"Is Dignity the Foundation of Human Rights?"*, 135

²⁷ It may, as well, be the case that human dignity and rights share a common ground, or something that grounds dignity maybe part of the package that grounds rights. Both possibilities cannot be ruled out by the mere assertion that rights are constituent elements of human dignity.

turn might entail a commitment towards an objective, value-neutral, ontological understanding of human dignity. Although this may be the orthodox view, John Tasioulas, for instance, recognizes that foundationalism “comes in both meta-ethical and normative versions.” According to him, what best epitomizes meta-ethical foundationalism “is the naturalist thesis that the objective grounding of [moral] human rights consists in their being logically derivable *exclusively* from an array of value-neutral facts about human nature or a metaphysical human essence.”²⁸ On the other hand, “[t]he normative version of foundationalism consists in the general idea that the values that ground human rights are somehow distinctive in character.”²⁹ Although normative foundationalism does not distinctively insist that the principle grounding human rights must reflect value-neutral facts, what unites both versions of foundationalism is the commitment to a dogmatic account of objectivity.

Certainly, foundationalism has a strong philosophical appeal specifically in the discourse on human rights; for instance, it appeals to objective qualities when making vindictory assertions and that it calls for a foundation that is not tentative but something that is capable of warranting the fundamental and non-derivative character of human rights. But, whatever the initial intuitive appeal of (particularly the normative sense of) foundationalism, its attraction is offset by the erroneous insistence that foundational considerations for rights must be distinctive, as it presumes that such considerations are not supposedly shared “with many other standards of inter-personal morality.” If the status of the current discourse in moral philosophy can be of any guidance, foundationalism has proved to be an unpromising theoretical approach. Take autonomy and dignity, for instance, the two plausible candidates for the foundation of human rights. Both values do also serve as standards of behavior in a section of inter-personal morality that does not involve rights, say for example as virtue-ethical standards of uprightness of character and of self-possession, with the respective normative claim that it would be wrong to create an environment which, by design, off-balances individuals from an authentic

²⁸ Tasioulas, “*On the Foundations of Human Rights*”, 45; emphasis mine. In an article entitled “Human Rights without Foundations”, Joseph Raz remarked that common assumptions about human rights- for example, “being universal, that is rights that everyone has, ... being grounded in our humanity” and that they are established by a moral argument- do not guarantee that they are important. Raz is under the impression that appeal to our common humanity (usually deployed to underscore the universality of moral rights) necessarily imports objectionable metaphysical understanding of the (moral) world. He overlooks the fact that foundational norms that may warrant the non-derivative fundamental character of human rights can also be normative but not metaphysical. See Joseph Raz, “Human Rights Without Foundations,” in Samantha Besson and John Tasioulas (eds.) *The Philosophy of International Law* (Oxford: Oxford University Press, 2010)

²⁹ Tasioulas, “*On the Foundations of Human Rights*”, 46

display of their sense of personal autonomy and dignity. In any case, it is not inconsistent to hold that the dignity of persons and/or autonomy are/is the foundation(s) of human rights, while at the same time granting that foundational concepts also play indispensable role in many other standards of interpersonal morality.

We must therefore eschew the requirement for foundational accounts to comport with foundationalism's foregoing appeal to exclusivism and, as John Tasioulas observes, we should be open to the idea that the "considerations that ground human rights may themselves belong within the normative domain; for example, they may be inherently reason-giving considerations about the elements of a good human life [universal human interests] or the equal moral status of all humans [i.e., human dignity]."³⁰

I do share Tasioulas' counsel for rigor, as he instructs us to not conflate something's being a foundation with the idea that it is *the* underlying ground. Moreover, *foundationalism* erroneously assumes that there is just one peculiar way in which one concept can be said to ground another, i.e., merely as a source of its justification. As will be discussed in the following section of this chapter, there are basically four ways of conceiving 'a foundation', of which justification is but one.

Nevertheless, Tasioulas does not appear to heed his own counsel for rigor when he lumps *foundationalism* and *essentialism* together. Consider meta-ethical foundationalism, for example; he takes it as asserting that being a foundation involves logical derivation from premises about immutable, "human nature or a metaphysical essence". But that is not necessarily the case, for a sort of meta-ethical foundationalism without a companion provision about a certain metaphysical status can, and does indeed, figure in the human rights discourse. In what is probably his most influential contribution to the theory of human rights, Alan Gewirth puts forth a framework for logically deriving generic human rights from some value-neutral 'generic conditions for action'. He subsequently argues that a structurally similar account can be made for dignity as the basis of generic human rights.³¹ The

³⁰ Tasioulas, "On the Foundations of Human Rights", 46 Even if Tasioulas' own account of the foundation of human rights, according to which universal human interests and dignity as equal moral status jointly ground human rights, would eventually turn out implausible, the core point of the discussion still remains true, which is that we must not conflate foundational theses with the dogma of foundationalism.

³¹ Alan Gewirth, "Human Dignity as the Basis of Rights" in M. J. Meyer and W. A. Parent (eds) *The Constitution of Rights: Human Dignity and American Values* (Ithaca: Cornell University Press, 1992), 10-28

point is, dignity foundationalism is not synonymous to dignity essentialism; the latter is based on the assumption that dignity designates an immutable human essence or metaphysical stature, while the former does not necessarily make such kind of assumption about human nature. One can appeal for deep foundations for human rights and venture on establishing human dignity as such a foundation, and can do so without having to assume that human dignity presupposes an intrinsic ontological status of being human in the natural order of things.

It must be clear that, my intention is not to portray foundationalism as not a foundational project proper; it certainly is. In addition to that, I defer to foundationalists' insistence on the importance of looking for deep foundations ("not just something 'foundation-ish'") for a comprehensive defense of human rights. I only took issue with its suggestion that such deep foundations ought to be distinctive and must rest on innate and objective attributes that are supposedly shared by all humans.

With regard to how one should approach the question what, if anything, grounds human rights claims, a few remarks suggest themselves. One simple lesson we take from a critique of foundationalism is that we must not conflate a defense of human dignity as a foundation of human rights with an appeal to dignity foundationalism. One should not, therefore, seek to defeat appeals to a dignitarian foundation of human rights by reducing them, by default, to an objectionable thesis of foundationalism: that would amount to making a category mistake and can easily lead to committing the fallacy of red herring. This is, however, not to deny that human dignity draws heavily on meta-ethical considerations such as the idea of moral personhood, but these considerations ought not prominently rest on an ontological basis of being human unless "we have a suitably expansive understanding of the natural [ontological] realm, one that does not limit natural facts to those that do explanatory work within the natural sciences [or within the metaphysics of the intelligible world]."³² The point is, if conceived with 'an eye of a pedant', even in the context in which certain normative facts about being human such as having equal moral status figure as objective properties, 'a non-foundationalist account of the grounds of human rights' can possibly come to light. This is therefore to say that both meta-ethical and normative considerations can be suitable candidates for the norms that ground human rights, and the jury is still out. Nonetheless, the gist of the matter is that we should be careful to not let those considerations regress into dogmatic foundationalism. I concur with Tasioulas (only) on that score.

³² Tasioulas, "*On the Foundations of Human Rights*", 46

2.3 What Does It Mean for Something to be a Foundation of (human) Rights?

The defense of rights would be incomplete without a thorough articulation of the grounds on which rights are founded. But the challenge is that “a foundation” is not an easily definable concept, as it can be understood in many distinct and meaningful ways. Part of the exploration of rights in morality involves an analysis of the various proposals for the foundation of rights, and that invites us asking “what is it, anyway, for something to be the *foundation* of rights?”³³

In this exploration of the various ways of understanding the idea of foundations, I draw heavily on Jeremy Waldron’s immensely informative analysis of “four possible accounts of what it might mean to say that one concept, α , is a foundation of another concept, β .”³⁴ A foundational relation between α -human dignity and β -human rights could be understood as stating that (a) human rights derived or emanating from human dignity “as a matter of history and genealogy”, or (b) human dignity providing the legitimacy or being “the source of the validity” of human rights claims, or (c) human rights being logically derivable from human dignity either by a deductively necessary argument or with additional empirical premises, or (d) the concept of human dignity fostering (shedding indispensable light on) our understanding of human rights.

2.3.1 Human Dignity as the Historical or Genealogical Basis

When philosophers speak of normative foundations of a concept they seldom take seriously its historical genesis or how it has evolved into the shape and content of its contemporary use. In other words, the order of concepts in the history of ideas may not be principally what many philosophers have in mind when they speak of human dignity as the foundation of human rights. This is, however, not to deny that genealogy shades some light on the meaning of concepts for it does provide clarity on how we come about their current use; but foundational account of notions like human rights usually calls for something deeper than a defense of the respective place of human rights in the genealogical order of ideas.

However, as Waldron aptly observes, as a matter of historical derivation it is more plausible to suppose that the discourse on human rights is a historical precursor to the contemporary discourse on human

³³ Waldron, "Is Dignity the Foundation of Human Rights?" , 125

³⁴ Waldron, "Is Dignity the Foundation of Human Rights?" , 125

dignity; he declares, "[o]ur modern dignity discourse owes more to the human rights discourse that has emerged since 1948 than the later owes to the former."³⁵ And, on the other hand, it is more sensible to conceive the idea of human rights as the modern successor to the frequently derided Enlightenment doctrine of natural rights under the aegis of which Pico's *Oration on the Dignity of Man* or Kant's conception of dignity in the *Groundwork* could sensibly be related to the modern conception of human rights, though only indirectly.

There are striking parallels between the natural rights tradition and the modern discourse on human rights, which seems to lend some evidence that the latter can be conceived to have grown or molded out of the first. If we follow the standard view of human rights as universal rights, that is, as rights possessed by all humans "not only in the state of nature but in all other "non-natural" conditions as well", we shall evidently arrive at the closest approximation of the notion of natural rights. Moreover, it is not uncommon to describe human rights as inherent to the human person (possessed simply in virtue of being human), also as rights that cannot be lost due to voluntary renunciation (inalienability) or by forfeiture due to wrongdoing, or by being rendered null and void due to a lapse of time without actual enforcement or through legal prescription.³⁶ But this supposed relation need not be interpreted as endorsing the defense of human rights purely as natural rights; instead, my point is merely that the notion of universal human rights may have derived from the idea of natural rights.³⁷

³⁵ Waldron, *"Is Dignity the Foundation of Human Rights?"*, 126 It must also be noted that, upon examining the history of ideas we certainly find a pre-existing discourse on human dignity long before the emergence of the human rights discourse in its current form. Pico's *Oration on The Dignity of Man* and Kant's conception of dignity are perfect epitomes of a discourse on the dignity of persons pre-dating the modern discourse on human rights. But these two conceptions of human dignity cannot be regarded as neatly correlated to the contemporary notion of human rights than to the antiquated notion of natural rights.

³⁶ John Simmons argues that a naturalistic account of human rights must fit the stated description. *"Human Rights, Natural Rights and Human Dignity"*, 145

³⁷ Even many of the original drafters of the UDHR had in mind more or less a naturalistic conception of human rights, although they eventually adopted a watered down version, that is, a declaration of human rights adept to the post-war status quo. But facts pertaining to the drafting of the universal declarations and subsequent protocols to the effect that they involved negotiations and compromises that are political in nature, have little bearing on, and do not therefore gainsay, the theoretical effort at providing a sound moral conception of human rights.

I remain sympathetic to the view that the connection between human rights thought and the Enlightenment notion of natural rights stretches beyond mere historical genesis. One might thus say with John Simmons: "Human rights might be not just historically tied to natural rights; they might be natural rights, or, rather, they might be one distinctive and important class of

In any case, derivation "as a matter of history or genealogy" is not the most salient feature of a foundational account of human rights. Most importantly, the question whether human dignity is a foundation in this sense (to moral human rights) will have little bearing on the theoretical effort at producing a sound conception of moral human rights. Therefore, questions of genealogy and history are defeated long before they are actually posed.

Dignity as the Source of Legitimacy

Waldron's second sense of one concept being a foundation to another involves a comparison to how a Kelsenian *grundnorm* serves as a source of validity to other legal norms. On Hans Kelsen's view, in the dynamic sense of law, legal norms form a hierarchical structure whereby lower norms are progressively legitimized by higher positive norms³⁸; for instance, the supreme law of the land that empowers a given legislative body to enact laws under pre-defined procedures ultimately legitimizes the validity of a legislative proclamation. But when we consider constitutional provisions themselves within which the very basic rights and duties of citizens are stipulated, there's no higher positive law that can underpin their legitimacy and validity. Basically, for this dynamic system of vindicating legal norms to make sense, argues Kelsen, we ought to have a supra-positive grounding norm upon which the entire positive legal system rests and be given coherence. This so called dynamics of a legal system, where norms at one level are legitimized by norms at a higher level in the legal system, must ultimately be tied together by a supra-positive norm- by what Kelsen calls a *Grundnorm*.

The relationship between human dignity and human rights may, thus, be likened to how such (suprapositive) *Grundnorm* confers legitimacy to all other normative provisions of a positive law. In a similar vein, as a normative concept, human dignity may be conceived as the ultimate supra-positive, but not necessarily supra-legal, source of legitimacy for human rights norms. And Waldron recognizes

natural rights. The "deep foundations" of human rights theory would then be simply identical to the foundations of natural rights theory." A. John Simmons, *"Human Rights, Natural Rights and Human dignity"*, 144-5

³⁸ Kelsen distinguishes between the dynamic and the static sense of legal validity. In the dynamic sense, legal legitimacy or validity is a function of higher laws empowering the passing of laws and directives at the lower level. "A static analysis, on the other hand, is a relation between legal propositions which is more like derivation than like empowerment and enactment." Waldron, *"Is Dignity the Foundation of Human Rights?"*, 128 And it is not uncommon for a static analysis to establish the validity of a legal norm through deductive reasoning. See Hans Kelsen, *Pure Theory of Law*, trans. Max Knight (University of California Press, 1967), 195-8.

that legitimacy "can mean anything from legal validity through popular acceptance to moral appeal."³⁹ In particular, human rights thus understood as claims having universal appeal, human dignity's purported role as a source of their legitimacy may be understood in two principal senses: as an overarching legal principle which confers legal validity or as a norm that provides 'moral force' to positive law's recognition of human rights.

If we suppose that the legitimizing force of human dignity is to be understood in terms of conferring legal validity, it goes without saying that we must also conceive human dignity in the first instance as a juridical idea. Similarly, Jeremy Waldron has suggested that: "Even as the ground of rights—as when we are told in the preamble to the CCPR that the rights contained in the covenant "derive from the inherent dignity of the human person"—dignity need not be treated in the first instance as a moral idea. After all it is not just surface-level rules that are legal in character (as though anything deeper must be "moral")."⁴⁰ To be clear, Waldron did not himself defend this particular notion of foundation, as he is merely insisting that the ultimate grounding doctrines of legal norms can be legal, and human dignity could be seen in a similar light; nevertheless, he defends the notion that human dignity can ground human rights in the sense different than the one being described here in this section.

Waldron presents Klaus Dicke as someone who actually expounds human dignity in terms akin to the Kelsenian *grundnorm*, wherein legitimacy is understood to mean legal validity.⁴¹ Dicke believes that any legal declaration "recognizes and proclaims" the rights humans already have, not that it generated them. Likewise, human dignity is invoked to confer a supra-positive explanation to the legitimacy of human rights claims; moreover, the dignitarian content of rights serves to emphasize that our insistence on their universal appeal "is not simply a matter of our having decided to create positive law in this

³⁹ Waldron, *"Is Dignity the Foundation of Human rights?"*, 128

⁴⁰ Jeremy Waldron, *Dignity, Rank and Rights*, 15

⁴¹ Klaus Dicke, "The Founding Function of Human Dignity in the Universal Declaration of Human Rights" in Kretzmer and Klein (eds.), *The Concept of Dignity in Human Rights Discourse* (Kluwer Law International, 2002), 111-118? According to Waldron, Dicke does not want to deny that the legitimacy of international human rights declarations partly owes to their near universal ratification by member states; he only took issue with the notion that people have those rights merely in virtue of the fact that those legal documents have proclaimed that they do.

form".⁴² I am at a loss, and so is Waldron, as to how the presentation of human dignity as the supra-positive element would eventually add up to a successful legal validation of human rights claims.

If legitimacy is to mean legal validity, it then seems to be the case that positive law is better off validating the established human rights norms without invoking human dignity in such capacity; human rights theory would be better served by the idea of human dignity if the latter is conceived as a high but equal status encapsulating human rights, but not as a source of their validity.

As stated earlier, to legitimize human rights claims could also mean to serve as the source of their moral appeal. Waldron favors this as a sensible interpretive framework for the idea of legitimacy in the context of exploring the relation between human dignity and human rights; evidently, he declares: "If it means 'moral appeal,' then, yes, we can say that the legitimacy of human rights *ideas* owes a lot to the legitimacy of dignitarian ideas (and vice versa)."⁴³ In this sense, the rights stipulated in human rights covenants "represent themselves as positive law responses to suprapositive ideas."⁴⁴ It implies, as a source of moral appeal human dignity need not necessarily validate specific human rights claims. Waldron is in good company with Jürgen Habermas who seems to propound a similar idea; human rights, he proclaims, are positive law responses to "specific violations of human dignity [presumably referring to the Holocaust], and can therefore be conceived as specifications of human dignity—their moral source."⁴⁵

In any case, Waldron does not consider the second type of foundational approach, whether interpreted as legal validity or as moral appeal, as the most plausible way of relating human dignity and human rights. His rejection of the second approach is consistent with his own professed view of human dignity as a status-concept; and, I believe, it is reasonable for Waldron to dismiss, as it would be equally consistent for Habermas to defend, the notion that human dignity legitimizes human rights claims by being their moral source. This is because, for Habermas the concept of a human right is a moral-legal

⁴² Waldron, *"Is Dignity the Foundation of Human rights?"*, 127 This is certainly what Schachter had in mind when he suggested that the invocation of human dignity in those declarations was to infer that "rights are not derived from the state or any other external authority" Schachter, *"Human Dignity as a Normative Concept"*, 853

⁴³ Waldron, *"Is Dignity the Foundation of Human rights?"*, 128 emphasis mine.

⁴⁴ Waldron, *"Is Dignity the Foundation of Human rights?"*, 128

⁴⁵ Jürgen Habermas, *"The Concept of Human Dignity and the Realistic Utopia of Human Rights"*, 464

chimera wherein dignity furnishes the moral appeal for the international legal regime of human rights, whereas Waldron conceives the notion of a human right (for that matter, also of human dignity) principally as a legal idea.

2.3.2 Dignity as a Normative Foundation

Having thus discussed the first two senses of a foundation, it appears that the third and the fourth senses are taken by Waldron in high regard—that is, as promising, while the third being precisely what many philosophers have in mind when claiming that human dignity is foundational to human rights claims. According to this third view, human dignity is a genuine basis of derivation for human rights claims. This is the sort of foundation customarily assumed to be reflected by the prominent preamble in the ICCPR according to which the rights stipulated under it "derive from the inherent dignity of the human person", although, and often with good reason, human rights scholars of Schachter's ilk prefer to interpret the preamble along different lines.

The kind of derivation Waldron has in mind is a logical derivation, which effectively deploys analytic unpacking of propositions about human rights claims and then augment it with an empirical premise (possibly about the kind of conditions necessary for human beings to lead a truly dignified life). He takes James Griffin's conception of human rights as a perfect sample of this third approach. Griffin argues that the dignity of persons could be analytically unpacked in terms of the value of normative agency; he identifies three levels of universal rights that protect and promote the normative agency of persons, namely, autonomy, liberty and welfare rights. In such ordering, each level generates a set of particular human rights claims comprising an expansive or constrained list of right-claims fitting the specific social setting in which they may be put to work. From the value of autonomy, that is, from the ability to determine for oneself what it means to have a worthwhile life and actually lead one's life accordingly, we can infer that one ought to have minimal liberty over certain areas of one's life.

Waldron summarizes the gist of Griffin's argumentative framework as: "All of this, I think, is supposed to be established more or less analytically, with dignity being constituted by normative agency, with normative agency being characterized definitionally by autonomy, and with various forms of negative and positive liberty being derived from what is necessary to protect autonomy."⁴⁶ On the other hand, Griffin also suggests that not all the conditions needed for protecting and promoting autonomy are

⁴⁶ Waldron, "Is Dignity the Foundation of Human Rights?", 129

established by a logically necessary argument, but some must be established by empirical observation of how autonomy operates ("flourishes or withers") in specific socio-cultural and political settings. That means, there are welfare rights that "are empirically necessary conditions of a person's being autonomous and free, but there are forms that are logically necessary."⁴⁷ A number of human rights-claims listed under the International Covenant on Economic, Social and Cultural Rights can be seen in light of necessary empirical conditions for the meaningful possession and exercise of normative agency, and the fact that some are phrased in vague terms to permit interpretations adept to specific contexts may suggest that drafters of the covenant had a similar idea in mind as Griffin.

Regarded by Waldron as "the most robust kind of rights foundationalism," this third sense of what it means for human dignity to be a foundation of human rights also figures in purely analytical form, without the mediation of empirical premises. On such approach, one begins with human dignity as a normative concept and proceed to analytically unpack what would be entailed by "necessary ascriptions of dignity to all human beings qua actual, prospective, or potential moral agents."⁴⁸ I am particularly referring to Alan Gewirth's *dialectically necessary argument* for the thesis that "human rights are based upon or derivative from human dignity." His argument for human dignity flows from his *dialectically necessary argument* for the worth of action and agency "as a general context of all morality (and indeed of all action)."⁴⁹

Let me explain. Gewirth asserts that every agency reflecting action is marked by two generic characteristics, voluntariness (freedom) and purposiveness. What that meant needs some elaboration, and so he explains: "By an action's being voluntary or free I mean that its performance is under the agents control in that he unforcedly chooses to act as he does, knowing the relevant proximate circumstances of his action. By an action being purposive or intentional I mean that the agent acts for

⁴⁷ Griffin, *On Human Rights*, 180

⁴⁸ Alan Gewirth, *"Dignity as the Basis of Rights"*, 20

⁴⁹ Gewirth calls his method *dialectical* in that without having to depend on empirical assertions its premise begins by the statement that would be made by rational agents then proceed to analyze what that logically implies. And it is necessary "in that the statements in question logically must be made or accepted by agents because of their necessary connection with the context of [any purposive] action." *"Dignity as the Basis of Rights"*, 20

some end or purpose that constitutes his reason for acting; this purpose may consist in the action itself or in something to be achieved by the action."⁵⁰

Having thus established the two generic conditions for action, Gewirth then proceeds to establish two things. First, he argues that for (1) an agent to do X for and end or purpose E it is logically necessary that he believes- (2) "E is good". The goodness attributed to E need not be moral goodness; it can be established under any sensible prudential criterion, whether objectively justified or not. "But what it shows already is that", Gewirth argues, "in the context of action, the 'Fact-Value gap' is already bridged. For by the very fact of engaging in action, every agent must implicitly accept for himself a certain value-judgment about the value or goodness of the purposes for which he acts."⁵¹ Gewirth then infers that, for an agent to regard his acts as good in the relevant sense, he must accept the proposition: (3)"[m]y freedom and well-being are necessary goods"⁵²without which his purposive action would either be impossible or an exercise in futility. Furthermore, "[s]ince the agent regards as necessary goods the freedom and well-being that constitute the generic features of his successful action, he logically must also hold that he has rights to these generic features, and he implicitly makes a

⁵⁰ Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1981), 27 He acknowledges that there can be objections against these two generic conditions; with regard to voluntariness he considers the problem of compulsion and psychological determinism, while concerning voluntariness he considers the objection that some acts may be performed solely out of the call of duty with no subsequent consideration by the agent to fulfill any purpose of one's own. In response, he states that, in the first place, voluntary action precludes compulsion of any sort, for when one acts under compulsion one cannot be properly said to have made a free choice. Although psychological conditioning profoundly affects an agent's predispositions, it is not robust enough to be "exhaustive determinant of a person's choice; he may still reflectively consider various reasons for alternative actions and choices among them on the basis of such considerations." (*Reason and Morality*, 37) In response to the objection to purposiveness, Gewirth emphasizes that whether an agent acts purely out of duty or "if he regards his action as morally indifferent or as not making any difference on some other specific [prudential] criterion" (*Reason and Morality*, 40), the most important feature of purposive action is that the agent simply intends to do it.

⁵¹ Alan Gewirth, "The Epistemology of Human Rights" *Social Philosophy & Policy* 1:2 (spring 1984): 1-24, at p. 15

⁵² Alan Gewirth, "The Epistemology of Human Rights", 15. Gewirth visibly moved from purposiveness to a more specific notion of well-being, i.e., "successful action rather than simply action-as-such." It is quite unclear how the value of purposiveness as a necessary condition of action extends to include successful action. Ronald Dworkin, for example, would disagree with that sort of reasoning. From the value of purposive action, he would argue, we can plausibly infer only about the performance value of the striving to succeed- "living well" as he calls it, not necessarily a successful action- "well-being". This seemingly minor distinction makes a worthwhile difference on the overall validity of Gewirth's argument. For Dworkin's distinction, see his *Justice for Hedgehogs* (Cambridge M.A: Harvard University Press, 2011) esp. Part Three and Four

corresponding right-claim."⁵³ At this stage of the argument, these generic rights to freedom and well-being the agent must believe that he has, remain prudential instead of moral rights.

Like Kant before him, Gewirth argues that what makes these generic right-claims different from mere emphatic demands, as a command voiced by a robber at gunpoint, is their universalizability. If the agent accepts that he has the right to freedom and well-being for no reason other than he is an actual or prospective purposive agent, he must then accept, at the pain of contradiction, that all prospective agents do also have those rights. Such is a fairly simplified articulation of Gewirth's dialectical necessary argument and the underlying Principle of Generic Consistency, a principal derivative of which commands us to "[a]ct in accord with the generic rights of your recipients as well as of yourself."⁵⁴

It is now pertinent to ask, where does human dignity figure in Gewirth's principal argument for the generic right to freedom and well-being? We can begin to answer this question by revisiting what Gewirth had to say about the general structure of his *dialectically necessary argument for human dignity*: "The argument for human dignity that I shall present here", he declares, "is closely related to the argument for the existence of human rights that I have worked out in much detail elsewhere."⁵⁵

As already stated, "actions have two necessary constitutive conditions or generic features: *freedom* (or *voluntariness*) and *well-being* (which derives from *purposiveness*); these are, respectively, the procedural and the substantive necessary conditions of action."⁵⁶ Having thus proclaimed that substantive conditions are already built in to the structure of purposive (or agency reflecting) action, Gewirth then proceeds to explain how human dignity or worth enters the discourse. In general, the context of value and worth enters the argument when we directly infer the goodness of the purpose the action is intended to accomplish from the mere fact that it was intended by the agent under conditions of freedom. Consequently, some element of worth is already presupposed when the agent assumes that the purpose for which his action is intended is good. And since the agent is the locus and source of the worth he does logically attribute to his actions, so must he also attribute to himself fundamental worth

⁵³ Gewirth, *Reasons and Morality*, 63

⁵⁴ Gewirth, *"The Epistemology of Human Rights"*, 17

⁵⁵ Gewirth, *"Dignity as the Basis of Rights"*, 19

⁵⁶ Gewirth, *"Dignity as the Basis of Rights"*, 19

or dignity. Moreover, the agent must also hold that, by universalization, all actual and prospective agents also have the same worth or dignity they must attribute to themselves, at the pain of contradiction. "It is not merely that he recognizes that *other agents* attribute dignity to themselves because of their purposiveness; in addition, he must attribute such dignity to each of them because of their own purposiveness, which is generically similar to his."⁵⁷

Therefore, on Gewirth's account, the existence of generic human rights follows dialectically, ie. analytically, from the dignity or worth every agent must attribute to himself and to others in virtue of being actual or prospective purposive agents. What is strikingly peculiar about Gewirth's conception, in contrast to other justificatory accounts of human dignity vis-à-vis human rights, is that he does not establish a substantive, or at any rate normative, level difference between dignity and human rights- but only ventures on establishing the logical progression of how generic conditions of action "provide the justifying grounds for the universal ascription of human dignity, and this in turn serves to justify the principle of human rights."⁵⁸ In fact, the dialectically necessary method allows him to further proclaim that "the content of that dignity is in turn morally modified by the universal and equal human rights in which the argument eventuates."⁵⁹

Despite its obvious merit for taking seriously the significance of logical rigor in moral reasoning, there is still something rather troubling about Gewirth's purely logical account of "why be moral." Indeed as rational beings, the logical requirement not to contradict ourselves constrains our practical reason for action; one who contradicts himself is either willfully ignorant or is leading an unexamined life like a reckless sailor drifting in an open ocean without a compass. But, such a requirement not to contradict oneself does not sufficiently account for the normative reason for action and, for that matter, self-contradiction is strictly speaking a logical not a moral defect.⁶⁰ The point is, in order to provide a

⁵⁷ Gewirth, *"Dignity as the Basis of Rights"*, 23

⁵⁸ Gewirth, *"Dignity as the Basis of Rights"*, 28

⁵⁹ Gewirth, *"Dignity as the Basis of Rights"*, 24

⁶⁰ Another objection to Gewirth's approach maybe that "an agent can quite clearly sidestep rational inconsistency by believing that his victim is somehow less of an agent...than he is himself." Ari Kohen, "The Possibility of Secular Human Rights: Alan Gewirth and the Principle of Generic Consistency" *Human Rights Review* 7:1 (October 2005),: 49-75, at p. 65 Ari and others are customarily referring to symbolic denials of agency and therefore of the humanity of victims, as, for example, done by Hutu extremists in Rwanda before they went on their genocidal project of exterminating their Tutsi victims. This objection is even more troubling than that because denial of agency figures not only in symbolic form but

compelling account of the foundation of human rights, one has to show more than simply demonstrating the logical necessity of accepting universal ascription of human dignity which in turn serves to justify the necessity of ascribing generic human rights to freedom and well-being, at the cost of self-contradiction.

I just have discussed Waldron's third sense of what it means to say that human dignity is foundational to human rights. Gewirth's approach, in particular, is here considered with the attention to detail that it seems to deserve partly due to its deep philosophical relevance and partly because it will be difficult to give justice to his elaborate argument for dignity as the foundation for human rights through an exposé of just a paragraph or two.

It is my contention that human dignity cannot be a normative foundation to moral human rights, as stated in the third sense of "a foundation". My general objection to the third sense of dignity as a foundation has something to do with, what I believe to be, a fundamental idea of human dignity with which the stated foundational account does not comport. I think, human dignity relates to moral rights in two fundamental ways: as a general normative status for having rights, and as a content of some specific rights that are related to dignity in some specific ways. In the second specific sense, dignity is attached to basic rights that has to do with the prohibition of degrading and humiliating treatments, while at the same time, generally, human dignity is a normative status and rights can be seen as instances to that status. Foundational accounts of the above sort do not fit with the above considerations about human dignity, as they do not specifically account for dignity's deeper relationship to some basic rights than to others. Besides, appraising human dignity as the normative foundation for rights lends itself to an unwarranted consequence that every right-violation is at the same time a violation of human dignity.

2.3.3 Dignity as an Exegetic Tool for Making Sense of Human Rights

Making sense of human rights, what they are and why we have them, Waldron contends, need not necessarily involve being in possession of an account that outlines a linear derivation of rights from a

there are also cases in which potential victims indeed are not prospective purposive agents such as people with severe and irreversible mental and physical disability (for instance, people in permanent vegetative state). For that matter, Gewirth's theory does not seem to adequately accommodate the case of non-agents or explain why they cannot have (at least some of the) generic human rights.

teleological basis "that would license the derivation of other rights from a statement of the *telos*."⁶¹ There is but one other sense in which a foundation for moral/human rights may be understood, that which Waldron defends.

The sort of foundation he has in mind works within the widely accepted list of human rights, and "it need not be conceived in a way that permits any expansion of the list of rights beyond what we start with."⁶² We could start from our most familiar and clearly established list of rights and look to see whether human dignity plays a key role in making sense of their point in morality. Basically what it says is that dignity sheds indispensable light on the interpretation of human rights provisions; and that is probably what Dworkin had in mind when he remarked that recourse to dignity is a necessary ingredient of taking rights seriously. Recognition of the dignitarian content of rights would undoubtedly help better understand the spirit with which right-claims are advanced as well as the spirit with which such claims ought to be confronted or addressed.

There is, however, one fundamental problem with the fourth foundational model. When we take dignity as a tool for interpretive understanding, the nature of such understanding that dignity supposedly brings to light appears to be contingent upon "how robust the conception of dignity was taken to be."⁶³ Contrast, for example, *Trop v. Dulles* Supreme Court case of 1958 with the familiar *German Aviation Case*. In the *Trop v. Dulles* case, Chief Justice Earl Warren opined that "[t]he basic concept underlying the Eighth Amendment [which prohibits cruel and unusual punishment] is nothing less than the dignity of man". Whilst in the *Airliner* case, the German Constitutional Court considered the constitutionality of a German legislation in the wake of 9/11 that would authorize the armed forces to shoot down a high-jacked plane that might be used as a weapon to destroy the lives of a greater number of people. After having interpreted the right to life in a strictly Kantian sense, *The Court* insisted that "with their lives being disposed of unilaterally by the state persons on board the aircraft, who, as victims, are themselves in need of protection, are denied the value which is due to the human being for his or her own sake."⁶⁴ It seems to me that interpreting the right not to be subjected to cruel and inhuman

⁶¹ Waldron, "Is Dignity the Foundation of Human Rights?", 131

⁶² Waldron, "Is Dignity the Foundation of Human Rights?", 131

⁶³ Waldron, "Is Dignity the Foundation of Human Rights?", 131

⁶⁴ Waldron, "Is Dignity the Foundation of Human Rights?", 132, *supranote* 50 Bundesverfassungsgericht, 15 February 2006, 115 BVerfGE 118, at § 122

treatment in dignitarian terms is more straightforward, and that it does not necessarily require a substantive conception of dignity as robust and as stringent as the Kantian view.

While in *Trop v. Dulles* the dignitarian reading of the Eighth Amendment imports a familiar intuition about human dignity, the *German Aviation Case* relies on denser and more controversial conception of human dignity. That probably demonstrates why we need a more robust account of human dignity when thinking about its possible role as a foundation of human rights than Waldron would allow.

On a more positive note, Waldron's preferred account highlights the need for human rights theorizing to attend to the fact that "human rights have a legal presence (in constitutional law or in human rights law)"; whereas his misgiving towards foundations of the third sort is directed at a particular aspect of it that "would license the derivation of other rights from the statement of the *telos*", which, he suspects, would lead to unruly proliferation of the talk of human rights. In light of his own contention that dignity is "a status concept, not a value concept", it is easy to see why Waldron is critical of the third foundational model- in the most familiar form in which it figures in the human rights discourse.

Dignity as a status concept would, perhaps, resist expansion from the currently available list of human rights, only if human dignity is conceived narrowly as a legal status. But not all status conceptions of human dignity rule out derivation of human rights claims in addition to the ones already given by international legal instruments. For that matter, I think, considering some human rights as derivations of human dignity is not necessarily inconsistent with Waldron's preferred account of dignity as a status concept. It is possible to defend dignity (as a foundation) in the sense that it licenses "derivation" of other human rights- rights that do not yet have a legal presence, while still maintaining "that dignity is a status [albeit, a general normative status, or a moral status] that comprises a given set of rights."⁶⁵

2.4 Summary and Concluding Remarks

Laying the theoretical groundwork for establishing the deep foundations of human rights is a noble philosophical pursuit, although legal and political philosophers often find it rather distracting to their particular concern for political and legal praxis. It is this spirit that was precisely reflected in Waldron's account and more pointedly addressed by Charles Beitz.

⁶⁵ Waldron, "Is Dignity the Foundation of Human Rights?", 134

However, deep foundations, specifically those foundations that license derivations of human rights claims from underlying values- ought not be viewed, by default, as teleological. As Tasioulas has suggested, foundational values for human rights can also be normative and therefore derivation is not necessarily a linear process of obtaining rights-claims directly from value propositions. That is precisely why, I believe, there is no inherent contradiction between Waldron's third foundational model and the supposition that dignity is a (normative) status-concept. This is as far as I can say about my response to the question whether and in what sense dignity can be foundational to human rights. My objection to the third foundational model is due to the fact that none of its representative accounts can adequately package the dualistic function that I believe human dignity plays in the constitution of rights.

I do, however, share Waldron's main objection against a linear approach for deriving human rights. If we were to think that a foundational concept ought to produce or vindicate each specific human right-claim, it is clear that human dignity is not that sort of foundation. That is particularly true because dignity is clearly germane to some human rights than to others. A dignitarian element is more evident in relation to a human right against forced enslavement or in relation to a right not to be subjected to torture and other cruel and inhumane treatments than in relation to liberty rights. Obviously, this does not imply that human dignity does not in any sense serve as a source of derivation to human rights-claims. All human rights claims need not have a unified source of derivation, and that differences in provenance between specific human rights-claims merely disputes linear derivation from one overarching norm or value, but not the very idea of deriving human rights from other normative concepts.

Having stressed the importance of recognizing human dignity's deep attachment with our familiar thoughts about the rights against cruel and inhuman treatments, it seems plausible to assert that rights-claims pertaining to degradation and humiliation maybe derived directly from human dignity. Whereas, other basic rights could be related to human dignity in other distinctive ways. I believe there is truth to the claim that possession of human rights fosters our human dignity. It is also my contention that basic rights, such as liberty rights, and human dignity do intersect, sometimes directly and at other times only in the derivative sense. The possession of human dignity, if at all signifies anything, it signifies one's equality on some fundamental level with other human beings. It is the very fact of this equality that possession of rights, and of human rights in particular, is presumed to reflect. But there are contexts in

which a fight for one's fundamental rights strongly signifies a fight for one's human dignity, and contexts that do not.

Take a denial or violation of liberty rights, for example: how and for what rationale this right is denied or violated makes a huge difference in determining whether there is a simultaneous (and straightforward) violation of human dignity. Whenever violation of liberty rights clearly signifies denial of the victim's fundamental moral status as a free and equal human being, we may then say that that straightforwardly constitutes a violation of dignity as well. A person whose liberty rights are violated just because he happens to be in the wrong place at the wrong time has less of a dignity claim than a person whose liberty is violated because she's of the "wrong" gender, race, ethnicity, religion or of sexual identity.

The notion that possession of rights reflect our fundamental equality as human beings does not mean every violation even of the most fundamental rights signifies a denial of one's fundamental equal moral status. But every single violation of one's dignity inherently implies some sense of denial of one's fundamental equal status as a human being, no exception. Wherefore, not all instances of human right violations are violations of human dignity. This has crucial implications on the nature of the relation between dignity and rights: to the very least one can infer that human dignity cannot be a genuine source of derivation for all basic moral rights; in addition, one may further conjecture that when violation of a basic right such as liberty signifies a violation of human dignity, it may be due to factors extraneous to the simple fact of a liberty-right violation, something that is constitutive to dignity but not liberty rights. One may defend this second implication without relinquishing the belief that the two concepts, i.e., human dignity and rights, are tied in some fundamental ways.

Finally, I have alluded to the idea that having rights fosters human dignity; by that I mean, possession of rights does not merely reinforce a person's sense of dignity, it is also constitutive to leading a life worthy of human dignity. Human rights in particular are presumably fundamental to living a decent and meaningful life, hence a case of their violation is a serious moral breach. Take for example the civil rights movement, specifically the struggle for an equal right to vote and the right not to be denied service in a restaurant. A right to vote is perhaps a specific case of an individual's right to political self-determination, while the latter maybe a specific instance of the too often elusive idea of equality. A black man claiming these rights in the United States, as recently as in the 1960s, may well have been fighting for securing respect to his dignity. The same cannot be easily said of a black man claiming his

established right to vote in 2015, although he might regard his right to vote as a fundamental right constitutive to his dignity. Of course, the contemporary reality in which voting rights are routinely protected does not diminish the status of the right to vote as a fundamental civil right; nevertheless, it does seem to diminish the importance of voting rights to one's dignity, even if specific cases of violation to this right are still a lived-reality to many people (for example, ex-offenders who have already served their time and have reintegrated into society are often unduly disenfranchised).

In conclusion, if human dignity were 'the fountainhead through which human rights flow,' any case of their abridgment would entail a violation of dignity and vice-versa. On the contrary, I think the relationship between human dignity and basic moral rights is much more complex than a matter of the latter being derived or justified by the first.

Chapter 3

Human Dignity and the Limits of Moral Rights

One interesting feature of the current discourse on human dignity is a direct link many presume to exist between human dignity and moral rights. Much of the discussion in the discourse on human dignity has been devoted to the analysis of just how this connection amounts to. In the foregoing chapter, we discussed what it means to say that human dignity is foundational to (human) moral rights; in that we considered four ways of conceiving what it means for something as human dignity to be a foundation of another, namely human rights. Most of those who claim that dignity is foundational to rights take it to mean that dignity is a concept from which specific human rights-claims are derived. Such a foundational model, which licenses linear derivation of specific rights-claims from a statement of value, does not appear consistent with the idea that human dignity is a normative concept.

Despite the controversy surrounding what precise relation obtains between these two important concepts, it seems clear that the possession and exercise of human rights is undeniably suited to the expression of our dignity. A normative space within which human rights operate also provides an appropriate platform for the respect and expression of human dignity. And, incidentally, in a society wherein the rights of men are routinely respected, there is also a strong companion tendency towards the recognition and respect for the dignity of persons. This can be asserted without entering into the debate as to how such a link between dignity and rights ought to be cashed in substantive terms.

The question this chapter explores is slightly different from what has been customary for many to ask, in that it asks about the link between dignity and rights from the opposite direction of fit. It investigates whether the role human dignity presumably plays in shedding light or in grounding (taken in the looser sense) human rights captures everything that is morally significant about human dignity. Instead of asking what it is about human dignity that is particularly important to human rights, this chapter proceeds by asking the question in reverse. We can then look to see if there's something significant about human dignity that would still be missing if dignity's presence in a normative system of a given society were constrained to just how it figures in its system of rights. In a society in which basic rights are usually respected and dignity's significance is widely acknowledged *but* only to the extent that respect for rights cultivates one's sense of dignity while encouraging an outward expression of dignity,

would there still be a missing element about human dignity the introduction of which would broaden or enhance the moral sphere of that given society?

One suggesting account by Michael J. Meyer has it that "what we commonly regard as essential to human dignity would not be explained even if we were able to delineate all of the relevant rights and the particular ways in which each of them expresses or protects human dignity."¹ The activity of claiming rights maybe "one very important way of expressing dignity" especially in circumstances in which claiming the rights one has is called for, when, for example, one is "under pressure of an external challenge".² One can imagine a situation in which claiming one's rights is clearly unaffiliated with the expression of human dignity. And sometimes claiming one's rights could be straightforwardly disgraceful, essentially designating a lack of dignified self-bearing and self-presentation. In underscoring that, Meyer was not confusing one's expression of dignity with the very thing that one expresses, that is, dignity. To be clear, he acknowledges that there is an important distinction to be made on the one hand between a person's expression of dignity with her sense of dignity, and on the other between a person's sense of dignity and human dignity in the normative sense according to which every human person is entitled to a treatment consistent with a moral title (worth or status) one has simply by virtue of being human. Nevertheless, Meyer insists, "[d]ignity has a presentational aspect that not all terms of value possess" and in fact "there is something to the expression of dignity beyond the mere claiming of rights, or for that matter, the activity of claiming rights in protest."³

It must be noted that, underscoring the presentational aspect of it is not a totally unfamiliar way of conceiving human dignity. Kant also has a notion of dignity as noble bearing, which envelops a duty to carry oneself with a bearing consistent with one's dignity, one that instructs rational beings to be "no one's lackey", instead to stand upright and never prostrate before any man. He emphasizes the importance of a dignified self-bearing as a key element of a rational person's duty to oneself. Despite the emphasis he placed on the presentational aspect of a dignified life, I believe for Kant it is not central to, or distinctive about, his conception of dignity. Meyer seems to think that, on the contrary, a presentational aspect is a key to the understanding of what is distinctive about human dignity. If Meyer

¹ Michael J. Meyer, "Dignity, Rights, and Self-Control" *Ethics* 99:3 (Apr., 1989): 520-534, at p. 521

² Michael J. Meyer, "*Dignity, Rights, and Self-Control*", 522

³ Michael J. Meyer, "*Dignity, Rights, and Self-Control*", 524; 526

is right in thinking that a person's expression of dignity is not just constitutive to human dignity but also the thing that distinctively signifies its moral significance, we then have to rethink the prevailing conceptual framework of philosophizing about human dignity since Pico's *Oration on the Dignity of Man*.

On another approach, however, even respect for paradigmatic human rights does not necessarily protect human dignity, although it may reinforce the positive expression of dignity. Avishai Margalit offers one such account in his widely celebrated book *The Decent Society*. He tells us that dignity and rights occupy distinct, but sometimes overlapping, normative spaces and one way to understand their variance is by considering dignity violations that are at the same time accompanied by rights' violation. Margalit defends the thesis that dignity violation may begin with violation of a basic right but it does not arise on account of it. For instance, it is fairly uncontroversial that humiliating and degrading treatments are paradigmatic violations of human dignity and, at the same time, they are also regarded as human rights violations. "And what better reason can you have for feeling humiliated than the violation of your rights, especially those rights that are supposed to protect your dignity?"⁴ Margalit poses this rhetorical question to emphasize an "air of obviousness" that seems to follow the contention that the concept of dignity and that of rights are inextricably tied. Behind every situation that requires the strongest moral condemnation, a right violation is almost always presumed to be present; Margalit wishes to make a case against this presumption that a theory of rights provides a comprehensive interpretive framework for the explication of grave moral offenses. Margalit likens rights-centrism in moral thinking to Wittgenstein's metaphor of "being held in the grip of a picture," which symbolizes "a case in which a model of reality is perceived as reality itself, simply because we cannot imagine any alternative to that model."⁵ In particular, concerning the idea of human dignity and the paradigmatic ways in which dignity violations figure, he thinks that there is a sound alternative framework to possible answers than the ones provided by rights-based morality. For Margalit, the relation between dignity and rights is incidental in that respect for each fosters the self-respect of persons. But respect for persons and of self-respect does not consist just in respecting their rights. On the other hand, one can have a sound reason

⁴ Avishai Margalit, *The Decent Society*. Translated by Naomi Goldblum (Cambridge, MA.: Harvard University Press, 1996), 29

⁵ Margalit, *The Decent Society*, 29

for her self-respect injured even in the absence of an accompanying violation of a right. And, by definition, injury to self-respect constitutes violation of the victim's dignity, so claims Margalit.

It goes without saying that both Meyer and Margalit perceive with acute skepticism the prevailing framework of conceptualizing human dignity within the rights approach to morality, though their respective critique targets different elements of the rights-approach to human dignity. Meyer envisions an inverted, nonetheless direct, relationship between rights and dignity; whereas, Margalit undertakes a general critique of the overarching framework of envisioning a straightforward relationship between dignity and rights. I must say that I may have simplified the distinction between these two authors for the sake of clarity; but, as we enter into the full exposition of their respective views we shall be able to notice that, given the aim of this chapter, their similarities are discernible and much more informative than what the differences between them might suggest.

This chapter proceeds first by laying out one prominent account of a direct relationship between dignity and rights by Joel Feinberg, as demonstrated in his celebrated thought experiment where he imagined a world without rights, and explored what, if anything, is morally lacking in that imaginary world. I shall then discuss Meyer and Margalit in light of the findings of Feinberg's thought experiment. Contrasting these authors seems appropriate because both Meyer and Margalit have in their own ways attempted to expand on Feinberg's thought experiment but wind up with conclusions contrary to, or at least critical of, that which Feinberg has advanced. I will discuss each thought experiment in parallel, with the view to see if something conclusive about the nature of things can be derived from a thought experiment that is designed to demonstrate the value of something by the contemplation of its absence.

I consider Feinberg's thought experiment as a brilliant attempt at providing a unique perspective for understanding the nature and moral value of rights; it confers penetrating insight into the exploration of what moral difference possession of rights might make, hence informative as it is original. Nonetheless, I will argue that Feinberg's analysis came up short, for he does not follow up with the step he took when inducting the concept of human dignity into the discussion. That renders his theory incomplete at best, for he does not fully explicate the normative apparatus with which the concept of human dignity operates, and at worst misleading because it lends itself to misrepresentations by critics like Meyer.

After having established that, I will examine Meyer's analysis of Feinberg and point out that he missed a few important points: It is my contention that he misread Feinberg as to what he meant by dignity as

“the recognizable capacity to assert claims”, despite his best intention in taking Feinberg seriously; moreover, his critique of Feinberg relies heavily on a notion of dignity that appears to me normatively less significant and hence inadequate to be employed for resolving the issue at hand- namely, the question pertaining to whether a deep normative connection obtains between dignity and rights. I shall return to this point later, but I leave it this way for now.

It is worth noting that Meyer conceives human dignity primarily as a “behavioral tendency” (also true of Margalit, albeit to a lesser extent), and by designating the presentational aspect of dignity as its core constituent he may therefore be accused of not doing justice to dignity as a normative concept. But to be fair, Margalit in particular seems to suggest a dualistic view of human dignity, one that encompasses both the dispositional or comportment sense and dignity in the normative sense. He asserted that dualistic meaning to dignity mainly in passing, and that makes it very difficult to link every single thought about human dignity that he espoused and construct a complete narrative, or conception if you will, of human dignity. Dignity is not a mere facade or presentation but a representation of self-respect, argues Margalit: considering dignity as a representation of self-respect may imply that whatever gives a sound reason for one to think that his self-respect is injured also gives a sound reason to believe that his dignity is also violated. Injury to self-respect, Margalit intuitively, constitutes severe moral injury to the victim. This brings us to Margalit's point of departure from the views of others who are also critical of the mainstream understanding of dignity as it figures quite prominently in the human rights discourse. Many of those who found the mainstream view about human dignity untenable, and who contend that the falsification of dignity's supposed role in grounding human rights severely diminishes its overall significance in inter-personal morality, often tend to sweep it under the rug. But, unlike those critiques of the mainstream view, Margalit believes that human dignity does still rest at the foundations of inter-personal morality even though it has a limited role to play in the grounding of human rights.

3.1 Three Thought Experiments on the Nature and Value of Rights and Dignity

I. Nowhereville. In my brief presentation of the problem that this chapter is to deal with, I emphasized that Feinberg's famous thought experiment will guide in structuring the debate on whether there can be normatively adequate conception of human dignity without any recourse to a theory of rights. In order to pinpoint the nature and value of rights, Feinberg asks us to imagine a world without them (he calls

"Nowheresville") and look to see what is prominently missing in such imaginary world without rights. He allows Nowheresville to be a fountainhead from which "benevolence, compassion, sympathy and pity" flow abundantly and that people routinely treat each other with a strong "sense of duty". We can make Nowheresville more pleasant as well as morally appealing to a Kantian by "letting the sense of duty be a sufficient motive for many beneficent and honorable actions."⁶ The duties introduced into Nowheresville must be understood "only in the sense of actions that are, or believed to be, morally mandatory, but not in the older sense of actions that are due to others and can be claimed by others as their right."⁷ Nowheresville can also have duties of the sort prescribed by positive law as long as it does not presuppose that the person in regard to whom duties are legally imposed on others has a claim to it. Subjects to the law may be said to "owe" obedience to the dictates of the law, "but they owe nothing to one another": it is something that they are required to do, under the pain of penalty or punishment; but when transgressions of duty occur, no one can be held accountable by the would be victims or third parties with no authority under the law. In addition, fellow Nowheresvillians have no right to complain even to the officer of the law, although they may alert him about possible transgressions. The situation is analogous to a kid who kicks his little brother but was forced to apologize to Daddy instead; a direct apology to his brother would entail an implicit recognition of the latter's status as a right holder, and this is precisely the only element lacking in their relationship. The point is that, in this imaginary world, people owe duties but only in an impersonal sense.

The departure of rights in Nowheresville does not, however, eliminate some familiar notions that will make this imagined world resemble the real world in which we live: despite the absence of rights, Feinberg grants that, there still remain "notions of *personal desert* and what I call a *sovereign monopoly of rights*."⁸ In its contemporary usage, personal desert includes a certain understanding of entitlement that persons can demand as their due, not just the sheer presence of a certain propriety in our giving something to others in virtue of some sort of role that they play or more specifically in virtue of some specifically admirable thing that they have done. But the sort of desert Feinberg ascribes to Nowheresville is a weaker kind of propriety which is "simply a kind of *fittingness* between one party's

⁶ Joel Feinberg, "The Nature and Value of Rights" in Feinberg, Joel. *Rights, Justice and The Bounds of Liberty: Essays in Social Philosophy* (Princeton, NJ.: Princeton University Press, 1980), 143

⁷ Joel Feinberg, "The Nature and Value of Rights", 144

⁸ Joel Feinberg, "The Nature and Value of Rights", 145 emphasis in original.

character or action and another party's favorable response, much like that between humor and laughter, or good performance and applause."⁹ But an act performed out of mere fittingness is something like a "gratuity" than a discharge of obligation the recipient of which would have a justified claim to. Personal desert will ennoble Nowheresville in that it will allow its inhabitants to treat one another with more grace by honoring moral and intellectual excellence, but occasional lapses in according personal desert would do no harm for "there is no wrong in the omission of what is merely gratuitous."¹⁰ Since Nowheresvillians have no concept of rights, it wouldn't occur even to the proudest amongst them that others' withholding of the fitting response that they deserve would mean that they are being slighted, warranting resentment or other forms of Strawsonian reactive attitudes.

Even with the introduction of personal desert, there is still room for improvement in Nowheresville. One might then ask: without the system of rights how are we to have fairly complex forms of socio-economic structure in Nowheresville? Indeed, life would be severely lacking without important human endeavors such as ownership of property, promises and contracts, social institutions like marriages and partnerships and others dealing with basic security of the person. With that in mind, Feinberg introduces the notion of "sovereign right-monopoly." It is basically equivalent to having social and economic activities held on a trust fund whereby the beneficiaries would be totally dependent on the trustee on matters of rules governing these activities. Analogous to Hobbes' *Leviathan*, which stipulates that the sovereign could dictate obligations to his subjects on all matters of public interest and in turn has a certain duty to be just to his subjects, a duty not particularly owed to them but only to a God, Nowheresville can also sustain a similar status quo by taking positive law or some notion of the natural moral law as the ultimate authority and guarantor of order. As Hobbes has it, the only one that can be wronged by the sovereign's actions will be God, the ultimate source of authority to whom the sovereign may say "to thee only have I sinned!" Likewise, in Nowheresville one can only commit sins against the authority of the law, not to one another.

There will, of course, be delegated authorities in Nowheresville involving persons who are empowered to enforce obligations in the name of the right-monopoly by imposing penalties on free riders. These delegates are the only persons to whom obligations are owed, but only due to their official capacity as

⁹ Joel Feinberg, *"The Nature and Value of Rights"*, 145 emphasis in original.

¹⁰ Joel Feinberg, *"The Nature and Value of Rights"*, 146

representatives of the rights-monopoly; but ultimately nobody owes anything except abstractly to the right-monopoly of the law. Even after such modifications, the activity of claiming rights and the correlated moral capacity to claim still remains foreign to this imaginary world. It takes, at least, three to create any meaningful moral relation: the ultimate authority and the other relating parties. But the other parties are not personally answerable to one another, which is precisely what Feinberg finds troubling with Nowheresville. So he claims:

"The most conspicuous difference...between the Nowheresvillians and ourselves has to do with the activity of *claiming*. Nowheresvillians, even when they are discriminated against invidiously, or left without the things they need, or otherwise badly treated, do not think to leap to their feet and make righteous demands against one another though they may not hesitate to resort to force and trickery to get what they want [in getting what they want through brute force or trickery, no one would, in turn, be presumed to wrong another fellow Nowheresvillian]...they do not have a notion of what is their due; hence they do not claim before they take."¹¹

A right is a kind of claim, declares Feinberg. One thing to be noted here is that defining rights in terms of claims and claiming, unless duly clarified, may lead to a confusion about the generic nature of rights. In some contexts, to make a claim means to submit or apply for the title itself; but on other occasions to make a claim is to exercise, that is demand as one's due, rights that one already has. One important distinctive feature of a right-claim is the following: "It is an important fact about rights (or claims), then, that they can be claimed only by those who have them....A right to which one could not make claim (i.e. not even for recognition) would be a very "imperfect" right."¹² Of course "having rights... makes claiming possible; but the point Feinberg wishes to emphasize is that, "it is claiming that gives rights their special moral significance."¹³

And, since "what is called 'human dignity' maybe the recognizable capacity to assert claims,"¹⁴ it goes without saying that the activity of claiming rights sets in motion one meaningful way of expressing our dignity. However, with the departure of rights in Nowheresville what is most clearly forfeited is that

¹¹ Joel Feinberg, *"The Nature and Value of Rights"*, 148

¹² Joel Feinberg, *"The Nature and Value of Rights"*, 150

¹³ Joel Feinberg, *"The Nature and Value of Rights"*, 151

¹⁴ Joel Feinberg, *"The Nature and Value of Rights"*, 151

very potent way of expressing dignity. This loss certainly leaves the inhabitants of Nowheresville not only in a state of "rhetorical deficit" (as Meyer has framed it) but also and more importantly in a state of 'deficit of normative space'. The normative space made available by the introduction of rights to Nowheresville will, therefore, install a social sphere for genuine exercise of respect for persons. My reference to 'respect for persons' may appear to pop up out of the blue, but I deliberately pointed it out to underscore the fact that, for Feinberg, respect for the rights of persons makes up the normative core, if not the entirety, of respect for persons. "To respect a person...or to think of him as possessed of human dignity," he argues, "is to think of him as a potential maker of claims."¹⁵ At this juncture, Feinberg invites his readers to take caution that "[n]ot all of this [thought about respect for persons] can be packed into a definition of "rights"; but he selected what is in his mind the best description of their moral significance, which furthermore explains what is fundamentally wrong with Nowheresville.

Although Feinberg emphasizes the importance of the activity of claiming rights in arguing about their supreme moral significance, he does not make a similar inference about the moral importance of being possessed of human dignity. In a postscript to *"The Nature and Value of Rights,"* he made a number of supplementary points two of which are extremely significant in addressing some likely misconceptions about his main theses and subsequently help tie up some loose ends within his theory's discursive framework. He noted:

"First, it appears in several places as though *having* rights is what is necessary for self-respect, dignity, and other things of value. Actually, it is not enough to have the rights; one must know that one has rights. In fact, the poor benighted citizens of Nowheresville do have various rights, whether they know it or not. They could not possibly know- or understand- that they have rights, however, because they do not even have the concept of a personal right. The inhabitants are consequently deficient in respect for self and others, even though, as hypothetical human beings, they have dignity in the eye of our imaginations."¹⁶

The knowing that one has rights is a necessary ingredient for thinking that, as a matter of fact, one does truly respect oneself and others. It makes possible for the conscientious claiming of one's moral due as

¹⁵ Joel Feinberg, *"The Nature and Value of Rights"*, 151

¹⁶ Joel Feinberg, "A Postscript to the Nature and Value of Rights" in Feinberg, Joel. *Rights, Justice and The Bounds of Liberty: Essays in Social Philosophy* , 156 emphasis in the original.

one can also conscientiously live up to his duties to others, in recognition to and respect for their rights; corollary to that, "consciousness of one's rights is necessary for the supererogatory virtues, for the latter cannot even be given a sense except by contrast with the disposition always to claim one's rights."¹⁷ The idea is simply that, one cannot truly make a gift or gratuity by being generous, forgiving or self-sacrificing unless one has done it with the understanding that he has rights and yet chooses to make sacrifices for others. The following analogy may shed light on the point under discussion. A sword of justice, not of vengeance, should neither be blunt nor too sharp: a blunt sword is dull and unworthy of the purpose for which one holds it, whereas a sword too sharp cuts very deep and no longer serves the purpose of self-defense. Possession of rights maybe likened to that: a person who never exercises his rights is a servile buffoon, a caricature of a self-respecting person; whereas, one who is always bent on claiming what is rightly his, never waves his claims nor voluntarily makes sacrifices above and beyond the call of duty, that person, in the words of Feinberg, is a "bloodless moral automaton."

Nowheresville II (Wayward Rightsville). The above observation about supererogatory virtues takes us to Michael J. Meyer's analysis of what life would look like in Nowheresville II whose inhabitants do have a proper understanding of their new found rights but seem to lack some significant measure of the capacity to self-control. It seems clear that at times the expression of dignity manifests through the having and effective exercise of (human) rights. But it is imperative to explore whether the having and exercise of rights captures everything significant about human dignity in inter-personal morality.

To help determine the value of claiming for the expression of dignity, and specifically for determining whether in all circumstances claiming their rights will lead right-holders directly to the expression of their dignity as human beings, Meyer conducts a further thought experiment. He asks us to reinstate to Nowheresville all the personal rights that Feinberg withheld from its inhabitants. In this new Nowheres-world-order, as Feinberg anticipated, Nowheresvillians would reclaim their lost dignity; Meyer also concedes that in such a world, when Nowheresvillians are confronted by others they now have one crucial way of expressing their dignity at their disposal. Now imagine that this new life abundant with individual rights is, however, ripe with the lack of the capacity to self-control.

The average Nowheresvillian understands the value of his new found rights, but characteristically lacks this crucial capacity to self-control; he just can't help it but succumb to this inner drive, which

¹⁷ Joel Feinberg, "A Postscript to the Nature and Value of Rights", 157

sometimes incites him to an overzealous rampage of demanding his rights even in situations where what is his is not clearly threatened by others, while at times it renders him docile, bowing his head in a servile manner in the face of abuse. At one instance he can be offensively self-assertive, while at another he refuses to stand up for himself (for the sake of simplicity, one can think of these polar characteristic traits as being held by two different persons, although that changes nothing with regard to the overall outcome of the thought experiment).

The first is the case of the "bumptious man" who is excessively impatient about his rights. He is overcome by the fear that others are about to renege on his rights and has a tendency to press for his rights too vehemently in circumstances in which such reaction is uncalled for. Cases like the second may also be motivated by fear, but instead of acting out his fear with obtrusive announcement of his standing to claim his due, the person is totally paralyzed by it, consequently puts on a servile posture and prostrate before others in order to get them to respect his rights. Meyer is specially emphatic about the implication these cases would have to the expression of dignity:

"Both cases point to the fact that there is something to the expression of dignity beyond the mere claiming of rights, or for that matter, the activity of claiming rights in protest[...] In both cases what seems particularly undignified is their near lack of self-control—their continuing failure to quell their own ungoverned fears. The greatest challenge to their dignity comes not from without but from within. Remarkably enough, it is just this way of expressing dignity—through some form of self-control—that Feinberg, among others, seems to ignore."¹⁸

Meyer's point is that, the act of claiming one's rights is not always expressive of dignity. A loss of self-control can even turn claiming rights undignified, as illustrated in the case of a bumptious man. On the other hand, possession of rights does not always lead to a dignified exercise of it unless one has self-control; in the case of the servile person, self-control may entail vehement but restrained protest. In addition to that, Meyer asserts that sometimes the only appropriate response is refusing to dignify something with a response. This strategy may work against the town's idiot who went on shouting racial slurs while being completely drunk.

Here is the upshot: "First, the activity of claiming one's rights is sometimes, but not always, expressive of dignity; at times it might be unrelated to an expression of dignity or even be undignified. Second, in

¹⁸ Michael J. Meyer, *"Dignity, Rights, and Self-Control"*, 526-7

some cases, lacking self-control might well lead one to an undignified expression; such a loss of self-control can even render the activity of claiming rights undignified."¹⁹ Self-control does not always mean self-restraint; sometimes it manifests in the form of curbing one's fear, standup for oneself and confront an abuser with a dignified self-bearing and presentation. In some situations, it might be asked of us to follow Kant's mantra: "Be no man's lackey."

This is therefore to say that there is no single act based definition of what is it for human beings to express their dignity, and that there are several roads to reach it of which the activity of claiming is but one. But this is merely part of the story that Meyer would like to convey. Admittedly, he is merely scratching the surface of the many senses in which a person can be said to have dignity: "In fact a person maybe said to have human dignity even if he fails to express his dignity, indeed even if he has been proven to be prone to quite undignified outbursts"; for "to say a person has dignity goes beyond an observation about his sense of self-worth to an observation about his ultimate value as a human being."²⁰ This distinction drives a wedge between the normative core of human dignity and its rather virtue-ethical crest, with the normative meaning presumed to trump comportment dignity. Moreover, such distinction comports well with the intuition that an undignified behavior of a person does not give us the moral license to treat him as if he lacks or has lost his dignity.

This is why, proclaims Meyer, "it is correct [for Feinberg] to focus on the capacity to claim rights and not simply the activity of claiming rights (or one's sense of self-worth) as one mark of the possession of human dignity."²¹ It now seems clear that by capacity Feinberg was referring to the permanent moral standing of right holders, but not the characteristic feature of these potential makers of claims; for that reason, I might have to reconsider my initial recoil towards Feinberg's account. Therefore, it is crucial to note that Feinberg's identification of having human dignity with the capacity to claim rights means this sense of possessing human dignity is not directly linked with the activity of claiming rights *per se* (for that would be a category mistake): If it were, and since each context of right violation presents a

¹⁹ Michael J. Meyer, *"Dignity, Rights, and Self-Control"*, 528 One is advised not to conflate the form of undignified behavior which varies from culture to culture, with "the lack of self-control that leads to it"; the lack of self-control that can give rise to culturally determined undignified behavior is, nonetheless, "a cross-cultural phenomenon." Ibid, *supranote* 14

²⁰ Meyer, *"Dignity, Rights, and Self-Control"*, 528-9

²¹ Meyer, *"Dignity, Rights, and Self-Control"*, 530

potent possibility to assert claims, every case of right violation would present as equally, if not more, dignified moment as in every case in which rights are generally respected.

It, thus, begs the question why Meyer critiques Feinberg on the assumption that the capacity to claim signifies comportment abilities. Besides, the only time Meyer's question—"does someone who has the capacity to claim rights thereby have all the *characteristics* essential to human dignity?"²²—would be appropriate is if one conceives the capacity to claim as a behavioral tendency or characteristic of persons. Meyer's emphasis on comportment dignity, that is, on the characteristics of persons that would render them worthy custodians of their human dignity, implies that his concern is categorically different from the one Feinberg is concerned with. As I have suggested a while ago, in general or in the context of Feinberg's thought experiment, by 'capacity to claim' we mean the moral standing to assert claims. Therefore, it is not far from evident that "the capacity to claim rights is not the only or even the principal capacity relevant to the possession of human dignity."²³ It turns out that Meyer's thought experiment is not suited for exploring the question whether there can be possession of human dignity (in the normative sense) that does not include the capacity, i.e., the standing, to claim rights. This is because Meyer sought to investigate whether the activity of claiming rights is always expressive of dignity, and his conclusions, although quite plausible answers to the matter he sought out to investigate, are by design inapplicable to questions about the normative standing to claim rights. In the end, he overstretched his premises to apply to the problem that they are unwarranted to settle. We must, therefore, devise a thought experiment quite differently from what was attempted by Meyer, specifically a sort of thought experiment that, par force, seeks to show an alternative framework for explicating the normative content of human dignity that makes no recourse to the rights approach to morality. This takes us to Avishai Margalit who advances an alternative framework to Feinberg's.

Before introducing another fierce critique of Feinberg, I would like to take a moment to underscore the following: In this chapter, my taking him as the focal point of discussion will likely give the impression that Feinberg is taking all the brunt of criticism; it might sound as if I portrayed him as setting himself up for an easy target by making bold claims about a topic as fundamental and controversial as the nature and value of rights. Far from that, I think he is fundamentally right in thinking that dignity is a

²² Meyer, *"Dignity, Rights, and Self-Control"*, 530; emphasis mine.

²³ Meyer, *"Dignity, Rights, and Self-Control"*, 530

normative status/standing and would like to defend him from some of his fiercest critics. Some objections to Feinberg sprung from misrepresentation of his view, as in the case of Meyer. But Margalit presents a different problem, because his challenge goes beyond a mere disagreement with Feinberg's specific arguments pertaining to the value of claiming (and the standing to claim) for the possession of rights. Instead, Margalit disputes the overarching conceptual framework or model within which Feinberg conceptualizes moral rights and human dignity. In particular, he charges against the presumption that there can be no idea of respect for persons or of self-respect which is detached from the concept of rights. He wants to demonstrate that there can, indeed, be a plausible conception of self-respect and of the dignity of persons, independently of the conception of rights.

I reiterate the point I made earlier to the effect that Feinberg has explicitly conceded that having rights is not enough "for self-respect, dignity and other things of value." In all fairness to Feinberg, it would thus be inaccurate to suggest as if he is a right centrist with respect to what constitutes the ideas of self-respect and dignity: although he thinks of human dignity as best protected through the regime of rights, certainly, he does not believe that possession and exercise of rights exhaust all what is morally significant about self-respect and dignity. To be clear, even this modest proposition is under threat from the seismic change in conceptualizing about self-respect and dignity brought forth by Avishai Margalit. For his thought experiment is designed to show that a theory of rights is not even necessary for making sense of self-respect and of human dignity.

Decentville (The Decent Society: Self-Respect and Human Dignity). If I were asked to condense Feinberg's main thesis into one single phrase, I would rejoin with Avishai Margalit and say: "he believes that without the concept of rights there can be no idea of self-respect which *we* would deem justified".²⁴ With this thought provoking claim, one can read Feinberg as implicitly challenging us to consider whether a society with a humanistic conception of morality is capable of having the concepts of self-respect, human dignity and humiliation without at the same time having a concept of rights. Margalit replies with a resounding yes; but for the affirmative answer to be evident we must first conceive self-respect and its cognates within the framework of the decent society as opposed to within a conception of the just society.

²⁴ Avishai Margalit, *The Decent Society*, 37

Let me explain. Rights are central to a conception of a just society, whereas self-respect and dignity figure most prominently as marks of decency. Of course, "rights are 'symptoms'- in the context of a morality of rights [in correlation to which a conception of justice is to be structured]- for identifying human dignity."²⁵ But, that does not mean a morality of rights is the single most important context within which we ought to conceptualize human dignity. Human dignity is closely related to the concept of self-respect, but the latter is better conceptualized in a system of morality that makes no direct recourse to the concept of rights. By conceiving self-respect in ways that supersede the talk of rights, we can cast indispensable light on the most distinctive feature of self-respect and of human dignity, so claims Margalit. Hence, what better way to begin than by contemplating injury to self-respect or humiliation and look to see if it can figure in a system of morality without a concept of rights!

There are two possible candidates for a system of morality that can explain injury to self-respect without making any recourse to rights: one is a society based on a strict notion of duty but without the notion of rights, henceforth duty-based society and the other alternative is to picture a society founded on the morality of ends, that is, on "the vision of the place of creatures in the chain of being" where man is regarded as "the 'crown of creation', that is, a creature who must be treated in a special way because of what he is."²⁶

In order to decide whether a society without a clear notion of rights can have the concepts of self-respect, humiliation and human dignity required for a decent society, we must first imagine a case that is clearly humiliating in the context of a morality of rights and consider if the content of that humiliating situation can be imported to a morality that does not contain rights and still retain a humiliating effect akin to the one that figures due to a right violation. Let us take the case of Uncle Tom, a classic example of a servile person. From the context of the morality of rights, it is easy to see that the violation of his fundamental rights to freedom constitutes injury to his self-respect, regardless of the fact that he does not subjectively bring himself to comprehend the true nature of his relationship with the slave-master. His devotion to his faith, and his subsequent duty to God, has blinded him from looking the slave-master relationship and his subservience for what it truly is. One can, therefore, say

²⁵ Avishai Margalit, *The Decent Society*, 40

²⁶ Avishai Margalit, *The Decent Society*, 34

that his situation is humiliating despite the fact that Tom has not subjectively felt all the indignities of being a slave, in the way a self-respecting person is expected to do so .

An insight into Uncle Tom's problem invites us to ask "whether Tom...can have a reason for feeling humiliated which we consider sound" or to ask in general "how people can have self-respect if they are unconcerned about issues which they ought to be concerned about."²⁷ Some insight into the psychological state of victims of humiliation reveals that servility often postpones the possibility of one's awareness into humiliation. As one commentary into the moral psychology of victims has put it: "Humiliation is most effective when it is so deep and pervasive that it is no longer recognized for what it is, but that does not gainsay its reality.... Humiliation in such a society [is] an integral part of its system of domination. Established practices and forms of relationship embody disrespect bordering on contempt for subordinate groups, and not relentlessly assault their self-respect but even seek to prevent them from developing it."²⁸ For that reason, Tom would have a sound reason for thinking that his self-respect is injured even if he actually does not tend to think that way and even if his condition has in turn strangled him from developing a sound sense of self-respect.

The point we should explore next is whether Tom would have a sound reason to consider his self-respect injured were it not for the contextual normative space of the morality of rights. Tom's situation is bewildering to us because we see it through the magnifying glass of a moral system that contains basic rights and freedoms of the human person. Uncle Tom's story also reinforces our tendency to interpret it within the context of the morality of rights, such that we can make sense of our outrage towards the humiliation that typifies the institution of slavery, which is so "deep and pervasive that it is no longer recognized for what it is" by countless Toms. Clearly, Tom does not have a concept of rights; it, thus, never occur to him to question or defy the established order but instead meekly accepts whatever his master requires of him, which to his mind is a reflection of the will of God. He probably considers his unwavering obedience to his masters instead as a mark of purity of heart or as a splendid display of obedience to the will of the creator himself and consequently honouring *Him*. In light of that, one can underscore the obvious wrongness of Tom's worldview and of the status quo that breeds servility by rendering Tom incapable of developing a sense of self-respect which we consider sound. It

²⁷ Avishai Margalit, *The Decent Society*, 37-8

²⁸ Bhikhu Parekh, "Logic of Humiliation" in Gopal Guru (ed.) *Humiliation: Claim and Context* (Oxford: Oxford University Press, 2009), 25-26 & 32

must be clear that Tom's inability to claim his rights and thereby express his self-respect is merely psychological, not a conceptual impossibility.

Such approach touches on the heart of the problem, but our concern with the story of Uncle Tom is slightly different: "The really difficult question...is whether Tom, in spite of lacking a concept of rights, can have a reason for feeling humiliated which we would consider sound"²⁹ from the vantage point of normative systems other than the morality of rights. In other words, can a duty-based morality or a morality of ends underpin the notion that Tom has a sound reason for considering his self-respect injured? For this exploration, whether Tom would actually feel humiliated is beside the point; instead, what is important is whether there is a normative space within which Tom would have a sound reason for considering his self-respect injured. Would we, then, run out of a fitting normative space for Uncle Tom to have that requisite sound reason in the absence of the moral system of rights? Margalit would reply with a resounding no. He insists that "[b]oth a duty morality and a morality of ends can provide the ground for cultivating the concepts of self-respect and humiliation."³⁰ I reiterate that by "duty morality" he meant a system of morality wherein "the concept of duty is the only moral concept at its disposal", and by the "morality of ends" he meant a system of morality that excludes concepts of rights and duties but based exclusively on an ontological order of beings.³¹

Although "duty morality" stresses the notion that the primary victim does not have a special standing with respect to compelling the person responsible for causing the moral injury to make amends for his actions, that does not diminish the fact that violation of duty is a serious affair. In the case of Tom, as long as a moral system includes a "duty not to humiliate", a justified reason for him to feel humiliated need not involve an implicit assumption about Tom's would be rights. With the absence of a recourse to rights, while the society governed purely by the regime of duties, the only thing that is missing would be Tom's special standing to demand that he not be humiliated. But some might still think that a full commitment to duty morality inevitably leads to an implicit "smuggling... [of] the concept of rights through the back door."³² The injunction- "thou shalt not humiliate"-makes little sense unless one also

²⁹ Avishai Margalit, *The Decent Society*, 37

³⁰ Avishai Margalit, *The Decent Society*, 37

³¹ Avishai Margalit, *The Decent Society*, 34

³² Avishai Margalit, *The Decent Society*, 32

presupposes that Tom has an interest in not being humiliated, which would in turn require vindication of why respect or defer to his interests. This all leads back to the language of rights, so they might claim. But Margalit thinks he has good reason to resist these would be critics. He replies: "duty morality maybe based on the idea that the thing which is good in itself is the absence of humiliation, while fulfilling the victim's interests is only a means to an end."³³ One does not therefore need to independently justify why respect for the victim's interests in not being humiliated, which in turn obviates the danger of sliding back to the language of rights.

A similar thing can be said about basing the argument for humiliation in a society based on "a morality of ends". This system of morality suggests that beings should be treated in terms that accord with their place in the ontological order of things. Presuming that Tom epitomizes the category of men (human beings), it would be humiliating to accord him a treatment only fitting to a lesser being. Tom would, therefore, have a justified reason to consider himself humiliated for the reason that he was accorded a treatment beneath his dignified place as a member of the human family. Moreover, Margalit envisions that in this society those who humiliate others "are reprov'd for not having acted the way the exemplary person would have done."³⁴ In the end, the argument for Tom having a sound reason to have his self respect injured in a society based on a morality of ends runs parallel to a similar argument based on duty morality.

A Critical Response to Margalit. Although one can have a sound reason for feeling humiliated in duty based society as well as in a society based on the morality of ends, I do not however think that Margalit made a successful defense of the claim—we can have an adequate conception of dignity and of self-respect independently of the morality of rights. Even if we grant that some notion of humiliation may figure within duty morality or within the morality of ends, it would be implausible to maintain that the idea of humiliation so conceived meshes with the prevailing normative idea of human dignity.

My critique of Margalit has two aspects: on the one hand, I believe his alleged vindication of a sound conception of humiliation outside the morality of rights does not obviate conceptualizing humiliation within the framework of the latter, and, on the other hand, in excluding rights' morality from his conception of humiliation Margalit shifts the meaning of the latter, which subsequently weakens its

³³ Avishai Margalit, *The Decent Society*, 33

³⁴ Avishai Margalit, *The Decent Society*, 35

moral appeal. I think Feinberg is right in thinking that the lack of normative standing to claim would make any moral duty, or any end in the case of morality of ends, less stringent and less compelling no matter how strongly it is construed within the given moral system. The idea is simply that, if one also has a claim to the thing another has a duty to, it then goes without saying that the directional element to the duty supplies extra moral constraint on the duty holder. This holds true regardless of the substantive content of the duty under consideration, say a duty not to humiliate.

Consider an example given by Margalit: he imagined a society whose duty based morality commands young people to respect old people by giving them a sit on a bus, in which the old "are not considered to have the right to a seat, but the young have the duty to give them their seat", whereas the bus driver is tasked to "make sure that the behavior on his bus conforms with the society's norms."³⁵ In this context, an old man who has been refused a seat by a teenager would not have a preferred status over any other passenger in asking the driver for intervention. But interestingly enough, say an old woman who already has secured a seat happened to feel strongly about the state of affair, considering it as an affront to her too. Margalit reminded us that "[h]umiliation, like embarrassment, is contagious." But the question is, is the old woman justified to feel humiliated in the same way as the old man would be justified to think as he is the direct victim of the humiliating act? Margalit replies with the qualified "if", as he suggests: "If we identify with the victim in that we share the characteristic for which he is being humiliated, then we also have a justified reason for feeling ourselves humiliated."³⁶ But, that changes nothing with respect to the normative status of 'being justified to feel humiliated', that it would still be less stringent than when the sound reason for feeling humiliated also confers a claim to demand that one not be humiliated. Even if the whole world is justified in feeling humiliated when one is humiliated, unless someone has a claim to it he is not said to have the most rigorous moral protection at his disposal. The same point can be illustrated negatively as: having a claim is inversely related to moral wronging. If in virtue of having a claim one can exclaim "you owe me", it is equally the case that one is wronged when the addressed refuses to fulfill his duties towards one. And the notion that a person has been wronged epitomizes the stringency or gravity of the moral violence brought forth when the duty-holder reneges on his duties to the right-holder. In other words, wronging is perhaps the most robust kind of moral wrong which Margalit seem to overlook.

³⁵ Margalit, *The Decent Society*, 30

³⁶ Margalit, *The Decent Society*, 32

Moreover, Margalit evidently relies on one key feature of humiliation in order to underpin his assertion that the connection between violation of a right and dignity violation is merely incidental. When a single action signifies both a right violation and humiliation (due to a violation of dignity) at the same time, Margalit insists that the later is partly due to humiliating gestures that are not naturally connected to rights. I think what Margalit has in mind is a case in which an ordinary right violation is transformed into a violation of dignity due to humiliating gestures that are embedded in, though not constitutive to, the right violation. This indeed speaks in favor of delineating the component of dignity violation from that particular instance of right violation, nevertheless it hardly speaks against humiliating gestures being naturally related to rights. It is one thing to say that humiliating gestures signify the manner in which a right is violated but not the violation of the right *per se*, and quite another to suggest that humiliating gestures are naturally unrelated to rights.

In my view human dignity is the moral status/standing for having rights, which also implies that certain rights are perforce devised to protect the very moral status for making right-claims. The rights that protect dignity prominently include rights that protect persons from humiliating and degrading treatments; and since humiliating gestures are part of the reason why certain forms of treatment are humiliating, the indicated right must therefore protect persons from humiliating gestures. For that reason, I believe Margalit's assertion to the effect that humiliating gestures are unrelated to rights is unwarranted.

That being said, on a separate note, one could also resist Margalit's main thesis by critiquing his reliance on a negative definition of self-respect. I suspect, he gave up prematurely on the possibility of a positive account of respect for persons. The question is, how can he rely on a negative account (i.e., an account about sound reasons for thinking that one is humiliated) in order to advance a positive view about self-respect and its cognates such as human dignity? As Daniel Statman succinctly summarizes this critical point: "sound reasons for thinking that one's self-respect is *injured* exist only if sound reasons exist to think that such respect is warranted in the first place. If there is nothing to respect in human beings *qua* human beings, then there is no room for *self*-respect either, and thus no room (i.e. no conceptual room) for injuring it."³⁷

³⁷ Daniel Statman, "Humiliation, dignity and self-respect" *Philosophical Psychology*, 13: 4, pp. 523-540, at p. 528

This may in turn prompt us to ask: what is dignity, for Margalit, anyway? He describes dignity as "the external aspect of self-respect" consisting of "the behavioral tendencies that attest to the fact that one's attitude toward oneself is an attitude of self-respect."³⁸ Whether we take the universal or particular dimension to self-respect its connection to our intuitions about dignity seems pretty obvious to discern. For instance, we tend to think that conferring dignity to persons involves according respect, "due honor" and regard to them as fellow members of the human commonwealth. The concept of honor can encapsulate what we mean by dignity, but "[i]f we want to base the decent society on the concept of the honor that everyone deserves in equal measure," he declares, "we must move from social honor to human dignity."³⁹ The talk of respect for persons and dignity figure as two points of view in a single conversation, i.e., "[f]rom the viewpoint of those conferring such honor we speak of respect for humans, while from the viewpoint of those honored we speak of dignity."⁴⁰ I intended to close this section with a positive note, and the above description signifies one of the few things Margalit has to say that I consider plausible.

3.1.1 Putting the Three Thought Experiments in Perspective

Here's a concise recap of the implications obtained from each of the three thought experiments regarding the nature of the relationship between human dignity and rights. Feinberg was intent on

One can think of two closely related, though conceptually distinct, notions of self-respect. In respecting the person's unique identity one thereby promotes self-respect as a human being. Recognizing the person as a bearer of a unique identity implies recognizing the humanity in that person. If humanity is marked by the potential for individuals to sketch a portrait of themselves that is uniquely personal in accordance with their ideals of life, we must then say that respecting the particularity of the individual entails respect for the humanity embedded in it. To appreciate our common humanity, to acknowledge our equal worth and to give everyone's interests and feelings equal weight in our deliberations about what is due to them, we must first presuppose that individuals bear certain kind of distinct identities in the way they conceive their lives and in the way they express them thorough the lives they created for themselves. However, "the difference between the two is also evident in the way people respond when the two forms of self-respect are violated. When treated in a manner that outrages one's dignity [as a human being], one would say, 'What do you think I am? An animal? A vegetable? I am a human being like you and will not be treated in this way'. When one's status as a distinct person is violated, one is merely likely to rejoin, 'Who do you think I am? Your clone? A nobody?'" Parekh, *"Logic of Humiliation"*, 37

³⁸ Margalit, *The Decent Society*, 51

³⁹ Margalit, *The Decent Society*, 43

⁴⁰ Margalit, *The Decent Society*, 43

demonstrating the value of rights by contemplating their absence; in so doing, he sought on identifying what is crucially missing with the departure of rights the reintroduction of which would crucially improve the moral sphere of Nowheresville. He came to the conclusion that, the activity of claiming and more importantly the capacity, i.e. the moral standing, to assert claims is what transforms Nowheresville into *Rightsville*: citizens of this new moral realm do now have the moral authority at their disposal to stand up for themselves and declare "in some fundamental way the equal of anyone." In Nowheresville, they used to be somehow alienated from the acts of others that directly affect them, unable or unauthorized to do something about it, in effect having little normative control over how others treat them. But with the introduction of rights, they now have normative control over essential aspect of their lives. It is this new found moral status/standing that Feinberg identifies as 'the dignity of persons'.

Feinberg's account of the dignity of persons is, I submit, more promising than its detractors are prepared to grant. Take, for instance, one of Margalit's reasons for resisting the sort of intimate relation Feinberg argued to have existed between having rights and the possession of dignity: he reasoned that Feinberg's thesis is untenable because "humiliation [violation of dignity] does not mean that one's rights are violated, but rather that one is incapable of demanding them" or that one suffers "humiliating gestures that are not naturally related to rights."⁴¹ Margalit presumes that that could undermine the basic premise on which Feinberg's argument rests. On the contrary, I think Feinberg's main thesis and the above seemingly critical response are not inconsistent. Evidently, for Feinberg, what is tragic about Nowheresville is not the violation of rights (for technically one can neither respect nor violate something that doesn't exist) but the very absence of the moral standing, the restitution of which would otherwise make possession of rights possible. In other words, the incapacity to demand is exactly what Feinberg has lamented about Nowheresville. It should be noted that, Feinberg was simply asserting that the idea of human dignity is indispensable for the defense of rights, but to my mind he did not contend that the other way round also holds true in every conceivable circumstance. Instead, Feinberg was explicit in acknowledging that possession of rights does not exhaust all that is important about "self-respect, dignity and other things of value." I believe, Feinberg succeeds precisely where his critics expected him to fail. Besides, his thoughts accord with some of our established beliefs about violations of human dignity.

⁴¹ Margalit, *The Decent Society*, 36, 52

He does not seem to assert that all violations of rights are by definition dignity violations; also his account supports the idea that certain violations of rights are characterized by the denial of the very capacity to assert claims, and, thus, are violations of human dignity. My quarrel with him is only that his conceptual framework does not make these points explicit. Here in this chapter, I used Feinberg as a point of departure as I proceed to formulating one of the central claims I shall be advancing at the later stage of this dissertation. In the following chapters I will take up the discussion on my preferred conception of human dignity from where we left off here, and for now, I leave it as it is.

With respect to Michael J. Meyer's thought experiment, I shall add nothing of significance that hasn't been said earlier in this chapter. As the foregoing discussions reveal, he took up a different idea of human dignity, in particular as a behavioral tendency or comportment ability as opposed to dignity in the normative-moral sense. He wanted to demonstrate that the having and exercise of rights is of any use only to beings who are capable of self-control. Of course, that is true; I might add, having what we call rights of persons is useless unless the right-holder is capable of self-consciousness, as well as of the capacity to compassion, love and other emotions necessary for forming human relationships. Should we therefore say that the dignity of persons rests on all those? I believe, that would be stretching the argument, which is exactly the trap Meyer could readily fall into. The problem with Meyer has to do with trying to answer a question he did not yet figure out how to ask.

As far as Margalit's thought experiment is concerned, I think a couple of points deserve restating. One minor point to be considered is an internal inconsistency with Margalit's account which, I think, manifests when he delineates dignity from self-respect. He puts the distinction thus: "Self-respect is tested negatively; dignity is tested positively. This means that self-respect is typically revealed when a person's honor is violated, that is, when he is humiliated...A person with dignity, in contrast, demonstrates her self-respect through positive acts which are not responses to provocations."⁴² This leads to an obvious consequence that "one [say a prickly person without saving-grace] may have self-respect without possessing dignity."⁴³ Whether this distinction between a dignified bearing and a demonstration of self-respect proves adequate, or not, it does not square with Margalit's other view about the relation between humiliation and human dignity. "Humiliation", he writes, "is a concept based on contrast, and the opposite of humiliation is the concept of respect for humans"; Margalit

⁴² Margalit, *The Decent Society*, 51

⁴³ Margalit, *The Decent Society*, 51

continues "[i]f there is no concept of human dignity, then there is no concept of humiliation either."⁴⁴ If Margalit's concept of humiliation cannot function without the notion of human dignity, how does it, then makes sense to suppose that one can have self-respect without possessing dignity?

Furthermore, according to Margalit, there are three interrelated senses of humiliation. One can have a sound reason for thinking that his self-respect is injured when (a) he is treated as sub-human, (b) when rejected from the human family, or (c) when one is deprived of his basic sense of self-control when one is forced to acquiesce into or assist his own humiliation (victims of torture are often made to unwittingly acquiesce to their own debasement).⁴⁵ This probably demonstrates that some violations of human rights (as opposed to the violation of other rights) are paradigmatic examples of humiliation—a violation of human dignity. But such an outcome is precisely what Margalit sought to refute: he did not wish to suggest that some rights are in some fundamental way related to human dignity, and yet simply following his own argumentative framework suggests otherwise. Consequently, it seems to me that Margalit's conception of the decent society is the case of 'a just society on steroids': *Decentville* is crooked because it is inadequately built or conceived. It was formulated to serve the same purpose as the just society, but is founded on wrong grounds.

⁴⁴ Margalit, *The Decent Society*, 149

⁴⁵ Margalit, *The Decent Society*, 89, 108-121, 146

Chapter 4

Human Dignity as Moral Status: Part I, The Concept of Moral Status

4.1 Introduction

In the current discourse on human dignity, there is one distinctive conception which defends the view that dignity is a moral status. However, moral status is a very contested concept, and it is particularly difficult to unpack what it means when one speaks of human dignity as moral status. In the literature, there is no unified view on what moral status is meant to convey when human dignity is defined in terms of it. One obvious reason why it is commonplace to have dissenting opinions about moral status is that, to the extent that moral philosophers espouse diverse substantive moral theories and so does moral status shift its meaning. For that reason, the disagreement about how to understand moral status would ultimately boil down to questions about the nature of moral obligations and the grounds why we have them. However, that is not a serious objection to any attempt at understanding moral status that its meaning may be deeply embedded in a particular understanding of morality.

Secondly, in its more familiar sense, moral status appears to mimic the structure of social status, for the term ‘status’ has aristocratic underpinnings that, perforce, seem to reflect hierarchy. If moral status retains some traces of the past, primarily it would be the rank and hierarchy that modern moral philosophy has largely discarded.

Whereas, human dignity, in the sense relevant to contemporary moral thinking, is a concept implying an entitlement or claim that is egalitarian in distribution. We are told that dignity is inherent in the human person, which is a sort of birth right to members of the human family, not something acquired through lineage or by virtue of the quality of one's character. The notion of equal dignity is also pervasive in the egalitarian framework of human rights. It does not, however, appear to square with connotations of rank and hierarchy that seems to inform the idea of (socially constituted) status. Indeed, high rank and uprightness of character, as conceived for example in virtue ethics of classical philosophy, conflict with the presumption of equality that human dignity underlies. A concept of moral status must, therefore, be consistent with the egalitarian underpinning attached to the idea of human dignity. In this chapter, I explore differing ideas of moral status and identify one that is compatible with bedrock intuitions about human dignity.

I can think of, at least, two general intuitions about human dignity that may serve as adequacy conditions for a concept of moral status capable of defining human dignity. The notion of human dignity I have in mind is egalitarian in distribution, that is, every human being is possessed of it in virtue of being human, regardless of differences in intellectual and moral-psychological capacities. Moreover, human dignity is not merely a sort of property every person is equally endowed with, it is also a claim or entitlement in virtue of which one can demand respect from every other human being. In other words, having dignity entails directed duties—duties that are owed to the bearers of dignity who would be wronged if the duties entailed by the principle of dignity were violated. If we were, then, to define dignity as moral status then the latter must reflect the above-described intuitions about human dignity.

Incidentally, the view of dignity as (high) status has traditionally been tied to aristocracy, epitomized in the Roman concept of *dignitas*, and to a certain extent it is attached to the Stoic notion of virtuous/dignified bearing and character. But, modern moral thinking has abandoned this traditional tie between dignity and ranking status and instead champions the discernment of dignity in terms of an inherent, incomparable worth of the human person. Dignity as worth has gained currency of late partly because it appears to mirror human dignity's egalitarian creed. The philosophical discourse on human rights, enriched by human rights declarations of the last century, has adopted the view that human dignity is an inherent value grounding inalienable human rights. Many of the human rights declarations include in their preambles the declaration that rights emanate from the inherent dignity of the human person.

But if status inherently sanctions hierarchy, why bother about a status conception of human dignity that seems to run contrary to bed-rock intuitions about morality in general and to human dignity in particular? I would caution against dismissing the view of dignity as moral status simply because it seems to retain some ties with inequalitarian views about the moral worth of human beings. Status in this classical-hierarchical sense reflects excellence, whether it be due to naturally endowed capacities or otherwise acquired by one's efforts (which itself is strongly influenced by the accident of birth to a given set of circumstances). To that extent, it appears to legitimize the flukes of natural lottery. And that clearly conflicts with the logic of morality, both in spirit and in letter. But there is another way of looking at it, specifically from the point of view of a perfectionist moral project. It judges people in terms of noble standards of moral and intellectual excellence, which, furthermore, aspires to achieve a virtuous social order wherein dignified bearing and self-control are displayed by the greatest number of

people. But dignity as noble bearing and uprightness of character is a slightly different concept of dignity that should not be confused with the notion of dignity as a claim by which human beings demand respect. We can still retain the idea of dignity as noble bearing, as it has an important normative function to play in morality, while at the same time maintaining that human dignity is principally a normative concept that reflects equal moral standing. Each of the above ideas obtain from the interpretation of dignity as moral status are that they are not inconsistent with each other.

On the other hand, contemporary philosophers have taken seriously the idea of inherent worth, having been influenced by prominent formulations of dignity in Kant's moral philosophy which seems to confer philosophical vindication to this contemporary paradigm and reinforce the recognition that dignity is an 'unconditional, inner worth' of the human person. Kant's influence in rekindling human dignity into the modern moral lexicon is beyond doubt, and contrary to the popular reading of Kant what might now be called status conception of human dignity is inspired by his moral theory. Nonetheless, given his formidable place in influencing modern moral philosophy, it is very tempting to take Kant's finely phrased assertions about dignity as a particular instance of the inherent value conception of human dignity. Despite appearances to the contrary, what I believe to be the most plausible interpretation of Kant's view on human dignity has it that human dignity cannot be adequately characterized by a simple idea of inherently valuable property.

The purpose of this two-chapter exposé is to explore different attempts at anchoring dignity in moral status. To that end, it is crucial to clarify the notion of moral status and define the conceptual terrains that it probably shares with other closely aligned concepts such as rank and moral worth. Once an adequate concept of moral status is established, we need to test it against shared basic presumptions about human dignity.

This discourse on moral status is organized in two, interconnected but fairly autonomous, chapters. In the first part, I shall exclusively discuss the concept of moral status as it figures in the literature, delineate different meanings that it might designate, and identify the most adequate sense in which moral status can be predicated to human dignity. Moral status maybe deployed in four distinct senses only one of which appears to be compatible with uncontroversial intuitions about human dignity that I have sketched earlier. And in the second part, i.e., in the chapter that follows this, I shall consider competing conceptions of human dignity as moral status. In it, substantive theories of three principal figures in the discourse will be presented and carefully analyzed: I shall lay a platform for Kant, Stephen Darwall and Jeremy Waldron to engage in virtual conversation with one another in relation to

the question what, if anything, normative implications follow from the assertion that human beings are endowed with equal dignity.

When two persons or entities are said to be equal in dignity, it simply means that they stand on equal moral footing to the effect that both are granted equitable moral consideration, whatever sort of moral consideration and corresponding moral obligations presumably follow from being possessed of dignity. If dignity were to be considered as an equal moral status, then moral status must eventually be spelled out in terms of moral obligations, which takes us to some of the interesting questions that follow: If moral status can be exhaustively spelled out in terms of moral obligations, what does, then, recourse to moral status add to the discourse? Do we really need the concept of moral status simply because it can deliver the linguistic convenience of condensing a set of moral obligations? But, if moral status adds substance to the discourse on moral obligations, could that be in the form of justifying them? However, a concept that is claimed to justify another must not itself be defined in terms of what it allegedly justifies. Should we, therefore, have an alternative account of moral status that does not make any recourse to moral obligations? Or can a normatively significant notion of moral status explain moral obligations without justifying them? If that is indeed the case, how can we then explain that some assertions of moral status appear to play a justificatory role?

Once it is settled that moral status is a significant notion in morality, these further questions also seem appropriate: should we uphold the presumption that moral status is a matter of all-or-nothing' polarity, or does moral status admit of degrees? Can one endorse degrees of moral status (in general) and at the same time consistently defend the notion that human dignity grants all human beings equal moral status? If yes, what explanatory model validly explicates distinctions of moral status but maintain equal human dignity?

4.2 Skepticism On the Concept of Moral Status

Moral status may be defined bluntly as whatever status assigned to a certain entity by a moral argument. Elementary survey of the literature reveals that the following meanings are routinely conferred to the concept of moral status. Some vaguely say, an entity has moral status if it can be a member of the moral community. Whereas others assert that “[t]he moral status of...beings determines how it is morally justified to treat them, or what is morally permissible to do to [them].”¹ Sometimes, it

¹ Manuel Toscano “Human Dignity as High Moral Status” *The Ethics Forum*, 6: 2 (2011): 4-25, at p. 5

has also been proclaimed that something has a moral status if it is an object of moral concern. These are some of the most general characterizations of moral status; and since they do not appear to contain distinct substantive content, they have the advantage of being applicable across different moral traditions.

Skeptics might, however, proclaim that the above prevailing accounts of moral status are either needlessly formal, rely on vague terms such as ‘the moral community’, ‘object of moral concern’ and the metaphor of ‘moral counting’, or depend on a reasoning that begs the question.

The charge of circular reasoning is distinctively potent, and we must, therefore, address it first before proceeding to a detailed discussion on the nature of moral status. Assertions of moral status often entail recognition of obligations towards certain beings that are purportedly possessed of moral status; and yet, the very idea of moral status is cashed in terms of those obligations that were, in the first place, claimed to follow from moral status. This is, therefore, to say that invoking moral status in order to expound our obligations regarding a certain entity is frustrated by the very attempt to define moral status exclusively in terms of notions that can be explained through the general idea of moral obligations. Incidentally, the attempt to explicate moral status in terms of specific moral obligations often takes a justificatory form, that is, moral status is posited as a ground for having those obligations. Consequently, circular reasoning abounds a justificatory account of moral status vis-à-vis moral obligations. It may, however, be argued that the problem is not in relating moral status with the notion of moral obligation, since appeal to moral status “summarizes claims about obligations without justifying them”, but it is in thinking that possession of moral status vindicates why we have obligations to certain beings.

Whereas, the question regarding which specific moral obligations we owe to certain beings “must be determined on the basis of normative and theoretical considerations that make no prior assumptions about moral status.”² Hence, exploring moral status from a non-justificatory framework clearly defeats the challenge of circular reasoning; it does so by placing the task of clarifying the concept of moral status and that of grounding moral obligations into separate theoretical realms. But this cracks open another fault line, which is that, placing the clarification of moral status and the grounding of moral obligations into two conceptual realms that never converge runs the risk of rendering the first

² David DeGrazia “Moral Status As a Matter of Degree?” *The Southern Journal of Philosophy* 46 (2008) : 181-198, at p. 185

superfluous. If moral status “summarizes claims about moral obligations without justifying them”, what significance does it then have in normative moral theory? If the use of moral status was merely for abbreviating claims about moral obligations, then that would severely undercut the concept's moral significance and consequently reinforce the suspicion that the talk of moral status may be redundant.

To have a complete picture of what constitutes moral status, we need to first establish that there is more substance to moral status than simply being an organizing concept. Roughly, the idea is that moral status must contain more substance than the familiar metaphors it appears to reflect, that it is an independent concept of its own augmenting ethical and moral theory than just being a convenient way of condensing the complex language of moral prescriptions, permissions, rights, and obligations. In a slightly different context, but equally applicable here, Benjamin Sachs suggested that one who takes the concept of moral status seriously must prescribe to a ‘further-fact-view’ of moral status.³ It holds that moral status provides a further (moral) fact than simply being a tool for condensing a bundle of moral obligations that it allegedly encapsulates.

Consider the following example. Suppose a doctor routinely uses, or more precisely abuses, patients in permanent vegetative state as guinea pigs for the clinical trial of experimental drugs (drugs that have little to do with their respective medical condition). One may, then, confront him with a stern warning: ‘You ought to stop that now. They are not things to do with whatever you so desire; they have moral status!’ In this context, moral status is deployed not merely to convey the notion that people in permanent vegetative state are owed certain obligations but also to underscore that our obligation to them is based on the notion that they are beings of the relevant sort that have moral status (perhaps, entailing that they have a good of their own that requires us to treat them as ends). In that regard, moral status seems to be invoked to justify the assertion that we have moral obligations. Evidently, the apparent justification conferred by assertions of moral status is modelled on the specific form of speech act, extrapolated from the discursive context as well as from the manners in which it was addressed. It may thus appear as a linguistic convenience, but not indicative of a substantive connection between the two notions. I do, however, think that certain obligations directly follow from moral status. Some actions are essentially characterized by a blanket denial of moral status, and moral prohibitions against

³ See Benjamin Sachs, “The Status of Moral Status”, *Pacific Philosophical Quarterly*, 91 (2011): 87- 104

them must directly flow from the affirmation of moral status.⁴ In this sense, certain moral obligations maybe described as direct instances of moral status.

To return to the above example, moral outrages against such blatant disrespect to human beings who happen to be in condition of absolute vulnerability may be conveyed and asserted in ways that do not suggest that our obligations are derived from assertions of moral status. One may alternatively remind the wicked doctor in our example using the language of rights—by exclaiming: 'you must not treat them that way because they have rights.' One may then proceed to enumerate the list of rights that are violated by the doctor's act. But at the moral base we find moral status as an organizing concept that consists in the normative core of those rights, which are allegedly violated by that doctor. As a normative core to the most basic obligations that we owe to persons in vegetative state, what it means to have moral status maybe captured by the generic claim that they not be treated as if they count for nothing. Specific rights may, then, be understood as instances to their moral status. But this relationship does not hinge on a principled belief that all obligations to certain entities are justified by the ascription of moral status. In responding this way, we can steer clear of circular reasoning and at the same time the paradox of justifying obligations by assertions of moral status (wherein moral status is in turn defined in terms of obligations owed to certain entities).

Since moral status conveys the idea that its possessor counts for something, we can reasonably conclude that things with moral status should not be treated as if they count for nothing; although this thought alone does not tell us about the scope and precise normative function of moral status, it is nonetheless sufficient to eliminate the challenge that we should eschew the talk of moral status altogether. We can, therefore, establish the moral relevance of the concept without having to substantively determine what is it exactly that things with moral status count for. In other words, one can advance a plausible argument for a "further-fact view of moral status" merely at the level of conceptual analysis.

4.3 Four Distinct Senses of Moral Status: Who or What Counts?

⁴ History is replete with plenty of examples; one can mention Japanese soldiers' treatment of prisoners of war, the Russian Gulags, or go way back in time to the Spanish inquisition and its characteristic practice of burning people at the stake. It is often said that 'civilized man' has short memory, that in his perpetual obsession for the future he relegated history to a distant relic divorced from the present. For a brilliant exploration of this human psychosis through the lens of history, see Jonathan Glover, *Humanity: A Moral history of the Twentieth Century* (New Haven: Yale University Press, 2000)

What does it, then, mean for something to have moral status? Many writers, including Wayne Sumner reminded us that “[e]very physical object has some status or other; it makes no sense to say that a thing lacks moral status than to say that it lacks shape or color.... To count for nothing is to have no moral standing.”⁵ Whereas, some with Alan Buchanan argue that being possessed of moral status determines who or what morally counts. Buchanan writes: “A being’s moral status can make a difference as to whether its behavior is subject to moral evaluation, how it ought to be treated, whether it has rights, and perhaps what kind of rights it has.”⁶

My exploration doesn't take seriously Sumner's expansive definition of moral status, for it is not sufficiently informative. Whereas, when asking ‘what does it mean for something to have moral status?’, I take it that having moral status, or moral standing as Sumner and others would prefer to call it, makes a moral difference. And the gist of my question relates to what that positive difference might be. There are four important senses in which an entity maybe said to have moral status. To think that X has moral status is to say one of the following:

- (a) how moral agents treat X is morally important or X matters from a moral point of view;
- (b) X counts morally in its own right;
- (c) "In its own right and for its own sake" X gives us reason to constrain our actions and behaviour towards it, or X is a direct object of moral obligation; and
- (d) X is owed duties.

Each of the four ways of defining moral status correlate to a unique set of moral prescriptions regarding entities (such as, respect, assist, protect, promote or defer to its interests, consider in our moral deliberations, or refrain from harm).

According to (a), our obligations regarding X may either be based on X’s interests or on the interests of others who might otherwise be affected by how we treat X. In this sense, having recognizable interests is a sufficient but not a necessary condition for X to be said to have moral status. This is simply because how we treat these things is morally important, even though, in and of themselves and absent other considerations, some things may have little or no moral significance. A vase-full of ashes would

⁵ L. W. Sumner, *Abortion and Moral Theory* (Princeton, N.J.: Princeton University Press, 1981), 26. In Morris, Christopher W. “The Idea of Moral Standing” in Tom L. Beauchamp and R. G. Frey (Eds.) *The Oxford Handbook of Animal Ethics* (Oxford: Oxford University Press, 2011): 255-275 supranote. 3

⁶ Buchanan, Allen “Moral Status and Human Enhancement” *Philosophy & Public Affairs*, 37: 4 (2009): 346-381 , at p. 346

mean little in and of itself, but would require enormous moral restraint on what to do with it if we were told that the ashes are in fact a cremated body of someone's loved one. Sometimes it is not about our actions towards an entity *per se* that is morally impermissible, but because our action is likely to cause adverse effects on the interests of other human beings, by putting a strain on their value systems or on their life projects or simply by offending them. This characterization of moral status, however, will not be of much significance, for instance, when it comes to the issue of differentiating the moral status of human beings from that of nonhuman animals on the one hand, and the moral status of sentient beings from the status of inanimate objects on the other.

Moral importance is a rather broad category within which any entity of little significance (in itself) may nevertheless fall under due to its relation to other beings with direct moral significance. To make that distinction clear, David DeGrazia and Bonnie Steinbock proposed a modified version of (a), henceforth a*. DeGrazia, for instance, stated that “to have moral status is to bear direct and independent moral importance” wherein, for entities, bearing direct and independent moral importance is closely tied to their *interests* or *welfare*.⁷ Steinbock writes forcefully about the connection between a thing's direct moral importance and it's being possessed of interests; he claims, “[t]o have moral status is to be the sort of being whose interests must be considered from the moral point of view.”⁸ Although describing moral status in terms of interests has been a familiar way to go about for many, non-Kantian, moral thinkers, the insertion of “the moral point of view”, however, imports an unnecessary complication.⁹ In any case, clearly this modified version of (a) is very different from moral status according to (b).

Analytically speaking, bearing a direct and independent moral importance (b) is not necessarily tied to having interests. When one declares that something matters morally in itself, that amounts to saying that it matters in a non-relational sense such that sufficient unto itself it gives us reason to constrain our actions towards it. It is precisely in this sense that we speak of works of art, music and nature as

⁷ According to DeGrazia, an action-type may have independent moral significance- as for example destroying the Grand Canyon or The Pyramids of Giza, for example- but an action-type cannot be related to the moral status of the thing, if the thing lacks interests. DeGrazia “*Moral Status As a Matter of Degree?*”, 183

⁸ Bonnie Steinbock, *Life Before Death: the Moral and Legal Status of Embryos and Fetuses* (New York: Oxford University Press, 1982), 9. See also Morris, “*The Idea of Moral Standing*”, supranote. 4

⁹ The talk of moral significance as a matter of “a point of view” begets profound confusion, since morality seeks to eschew the subjectivism implied by ‘a point of view’. However, the talk of ‘a point of view’ is sensible when merely used to underscore that interests matter from distinct normative points of view and morality is but one. I invite the reader to take that the latter meaning is what is intended by “the moral point of view”.

counting in their own right. Certainly works of art and nature have a morally protected use beyond themselves; but if it is true that they count morally in their own right, then, regardless and independently of their use value, they possess a special sort of moral significance.¹⁰ In contrast to (a) according to which simply being morally important endows moral status to the thing, (b) appears to be more refined since it qualifies moral importance with a proviso that the thing should matter morally in and of itself. Nevertheless, at this level, no distinction is to be made between sentient and non-sentient entities or among distinct members of each category. Distinctions of that sort may nevertheless figure in (b), but only as articulations of degrees of moral status.

Suppose morality prescribes that we act for some entity's sake. It then goes without saying that that entity counts morally in its own right. But the other way round does not hold. Something may count morally in its own right but lack interests or a good of its own. Kamm highlighted this distinction with striking clarity, but she observes that usually it is (c) "that people have in mind when they ordinarily attribute moral status to an entity."¹¹ For that matter, Mary Anne Warren and Christopher Morris have also defended moral status according to (c).¹²

It is reasonable to say that (c) circumscribes (b), but is substantively identical to a*—unless by any stretch of the imagination one could sensibly say that an entity's interests may have a direct and independent moral significance but morality does not then prescribe that we ought to act for the sake of its interests. That would, however, make little sense. On the other hand, I believe there is a direct correlation between a being's interests having independent moral importance and our *prima facie* obligations to act for the sake of preserving and protecting its interests. All things considered, in any given situation it may be morally permissible or even required to disregard the interests of some entities with moral status; but that is beside the point.

¹⁰ In general, those who prescribe to the thesis that moral significance has a categorical grip (or Kantians to be precise) must by definition also assume that instrumental value, if anything, has a normative power to govern our actions only outside the purview of morality. For something's instrumental value is relative to real or perceived expediency and such value will cease to exist whenever the relationship of expediency is no longer viable. On the other end of the spectrum, there are those who contend that moral significance is nothing but a series of instrumental ends. A thing's moral importance is always traceable to how it is related to something else, and that there is no such thing as morally counting in "its own right". This debate goes way back to Hume and Kant, but it is not of central importance to our discussion since our purpose is to zoom in on plausible ways of conceiving human dignity as moral status.

¹¹ Kamm, "Moral Status" in *Intricate Ethics: Rights, Responsibilities, and Permissible Harm*, 229

¹² See Mary Anne Warren, *Moral Status: Obligations to Persons and Other Living Things* (Oxford: OUP Clarendon Press, 1997); "On the Moral and Legal Status of Abortion" *The Monist*, 57: 4, pp. 43-61

Finally, there is another distinction to be made within the sort of entities whose interests have an independent moral importance, i.e., “between those who are benefited or protected by duties and those to whom duties are owed.”¹³ This understanding of moral status (d) cuts across the distinction between duties *simpliciter* and directed duties. A duty owed to an entity is a ‘directed duty’; it entails not only that the corresponding moral obligations are to be performed for the good of that being, but also the recognition that it is the sort of being to be reckoned with. That is to say, the moral agent is directly answerable for how she acts, or otherwise disinclines to act, in certain ways toward that being: “a duty owed to a being is correlative to a claim-right held by the being.”¹⁴ In addition, the distinction between simple duties and directional duties bears a familiar correlation with the dichotomy between doing the wrong thing and wronging some entity. Directed duties are correlated to moral wronging. On the flip side, one cannot be said to wrong some entity unless the duty that one violates are owed directly to that entity.¹⁵

With respect to (d), there is but one important disclaimer to consider, which is the controversy surrounding the issue whether duties owed to an entity necessarily correlate to a specific interest of that entity. For instance, duties of forbearance (or non-interference) that are particularly owed to persons correspond to their liberty rights, which in turn may not essentially reflect a specific interest. Some think of liberty rights as defined essentially in stark contrast with interests, while others prefer to speak of a morally protected interest in liberty. Nevertheless, for liberty rights to be of any good they must be accorded to entities with recognizable interests. The notion of liberty rights of an inanimate object of moral concern, or of a sentient being with no recognizable conception of the self and of the good life, is a meaningless concept.¹⁶ To be sure, it may also be said that persons have a general interest in their

¹³ Morris “*The Idea of Moral Standing*”, 4

¹⁴ For a detailed discussion of moral status, directional duties and moral rights, see Kamm *Intricate Ethics*, chs. 7 and 8

¹⁵ Wronging ought not to be confused with harming. Harm is a broader concept, it involves trampling over the interests of others. In contrast, wronging is a distinct moral category; it may involve infringing upon the interests of others or their morally protected interest in liberty, but the corresponding duties must be owed directly to those entities whose interests such duties are meant to protect.

¹⁶ To a livestock or poultry, for example, being allowed to roam freely outdoors, rather than being confined in an enclosure 24 hours of the day, is more of an interest than a liberty, in the strict sense of the term.

liberty, even though liberties and interests are conceptually distinct: it is not inconsistent to subscribe to both claims at the same time.¹⁷

4.3.1 Moral Status and Moral Standing: Are they Conjoined Twins?

It is worth noting that some disagreements about how to understand moral status comes down to one crucial terminological dispute, namely between the notion of moral status and that of moral standing. Much of the philosophical literature blurs the two, as many writers prefer to talk only of “moral status”, while few tend to employ ‘moral status’ and ‘moral standing’ interchangeably. Alternatively, others profess to advance “an innovative distinction between the notion of status and that of standing.”¹⁸

It is not always the case that those who believe in the distinction between status and standing (henceforth dualists) are necessarily at odds with others who prefer to talk only of moral status (henceforth monists). Some monists made moral status applicable both to a broader category of entities as well as to beings with respect to whom dualists speaks of moral standing. Despite their misgivings about making a conceptual distinction between status and standing, some monists, nevertheless, speak of a broad and narrow sense distinction of moral status, while a few others alternatively speak of moral status as a matter of degree below a certain threshold. In the broader sense, or below a certain threshold in the latter case, we may inscribe a morally protected status to a broader consortium of beings; whereas, moral status narrowly defined to mean the specific status possessed by beings such as ourselves bears the exact mark of what proponents of the ‘innovative distinction’ define as “moral standing”. Analogously, in “*The Idea of Moral Standing*”, Christopher Morris distinguishes between moral status and moral standing, conceiving the latter simply as a specific kind of moral status.

According to Frances Kamm, who espoused the broader sense and narrow sense distinction within the notion of moral status, moral status may broadly “be defined as what it is morally permissible or

¹⁷ We need not enter into the debate over what rights might constitute, i.e., whether rights are protected interests or protected choices. It is argued by many that even liberty rights are possessed by beings with recognizable interests-precisely to those beings to whom liberties could be of any good/use.

¹⁸ Christopher W. Morris “The Idea of Moral Standing” in Tom L. Beauchamp and R. G. Frey (Eds.) *The Oxford Handbook of Animal Ethics* (Oxford: OUP, 2011) reprinted in *Oxford Handbooks Online*, May 2012. For a similar distinction between status and standing, see Allen Buchanan “Moral Status and Human Enhancement”, *Philosophy and Public Affairs* 37: 4 (2009): 346-381 Both think, moral status is a comparative notion. Yet moral standing mean different things to each: For Buchanan, moral standing is a basic mode of moral counting but for Morris moral standing connotes high moral status, and hence, in respect to that, Morris flips Buchannan’s distinction on its head.

impermissible to do to some entity”.¹⁹ On this usage, there are entities whose moral status has it that we have no moral obligation whatsoever regarding them; and, there are entities such that certain ways of treating them is morally impermissible. In other words, moral status does not necessarily signify the presence of moral obligations. Even in relation to things whose moral status imply positive obligations, according to the broader understanding, there can be no status regarding distinction between different ways of moral counting.

For instance, when some environmental ethicists claim that we have duties to the ecosystem they rarely mean that those duties are owed to the ecosystem as such. It is rather plausible to think that not every life form count morally as strongly as to justify that I owe direct obligations to each of them. To reiterate, there is an established tradition in moral philosophy of distinguishing wrongful acts from acts that are merely wrong; however, the broader understanding of moral status does not appear to account for such a significant distinction in morality. Since moral status in the broad sense does not explain why we have disparate obligations towards dissimilar entities of moral concern, I think the concept will serve moral theory better if we rather adopt a more restricted employment of moral status.

This takes us to moral status in the narrow sense, which, following Morris, I shall alternatively call “moral standing”. As Kamm defines it, in the narrow sense it may be said that “an entity has a moral status when, in its own right and for its own sake, it gives us reason to do things such as not destroy it or help it.”²⁰ Two distinctive features characterize moral status in this limited sense: the attribute of being valuable in its own right and the behavior of moral agents towards it, precisely, they ought to act for the sake of the thing with moral status. Kamm then underscore that there is a distinction to be made “within the class of entities that count in their own right”, such that there is a subset of which that give us reason to act for ‘their own sake’. This distinction cuts across moral status according to (b) and according to (c).

A thing, say a work of art, may count morally ‘in its own right’ in the sense that there are non-instrumental reasons to constrain our actions towards it in ways that preserve and maintain its continued existence. “But this is still to be distinguished from constraining ourselves for the sake of the work of art...”, which would make sense only if the work of art itself could get some benefit out of continuing to exist; but, clearly a work of art does not accrue anything out of our behavior towards it

¹⁹ Kamm *Intricate Ethics: Rights, Responsibilities and Permissible Harm*, 227

²⁰ Kamm, “Moral Status” in *Intricate Ethics*, 229

nor incur any cost/harm if we were otherwise unwilling to perform our respective obligations, for instance, if we were to gratuitously destroy it. In other words, the concept of benefit is hardly applicable to things of that sort, for they have no end of their own. These things can be damaged or destroyed, but since they have no 'experiential welfare' they never get benefited nor be harmed by our actions. Therefore, moral status in the narrow sense excludes things that count in themselves but not for their own sake.

Expanding on Kamm, further analysis, yet again, reveals that there is another distinction to be made within the category of beings that have moral standing. Consider, for example, a few adorable rabbits who found their way into your kitchen after having been playfully chased by a toddler who wandered away from a family camping site in a nearby animal sanctuary. For the sake of argument, let's assume that the only exit-door was accidentally slammed shut having effectively locked the toddler and those hapless rabbits inside the kitchen. Furthermore, both the child and the rabbits are total strangers to you; hence, the moral pull of special relationships bears no leverage in this circumstance. After a lot of chasing and running around, the kitchen is now defiled with stuff from cupboards and the refrigerator, resulting in a mix of spilled flour, cereals and pastries, emptied pack of juice and spilled milk and a couple of smashed eggs spread all over the kitchen. And by the time you happen to arrive the situation had eventually deescalated into a friendly play with food; by each passing minute the rabbits and the toddler have grown fond of each other, although your kitchen has turned into a pile of mess.

Suddenly, you recalled a recent warning from health officials about confirmed cases of Hepatitis E virus infection suspected to be spreading fast among the rabbit population. And, you are aware that rabbits often bite when they get excited. Consequently, alarmed by a deep concern for the toddler's welfare, you snapped, pulled out a shotgun and gunned down the rabbits. Your reaction might be extreme, but appears to be justified by an overriding prudential concern for the child's welfare. Had there been no danger to the toddler, the whole saga would have had a different moral spin; that is to mean, your action would be vulnerable to a strong criticism or, to the very least, there would be profound skepticism over the moral justifiability of your shooting rampage.

I take it that, both the child and the rabbits have morally protected interests for the sake of which we ought to constrain our actions and behavior. Hence, both can be said to have a moral standing. Our preferential treatment to the human offspring, however, implies that we are making a distinction within the category of beings that have moral standing. But, why think the toddler's welfare overrides that of the rabbits'? One predictable answer could be that a human child possesses a higher moral

status/standing than a rabbit. For the purpose of this section, what is important is not whether a human child is indeed of higher moral status than an adult offspring of the so-called 'lower animals', but the important thing is rather the analytic distinction that such a claim brings into perspective. Both are arguably 'direct objects of moral obligation' in so far as 'in their own right and for their own sake' they give us reason to not do things that severely undermines their welfare. But the distinction comes down to whether the obligation we have is one that we owe it to them. Even the most conservative moral thinkers do often accept the idea that we have strong moral obligations towards other animals, but many reject the hypothesis that we owe it to them.

The gist of the matter is that, not every moral obligation performed for an entity's sake necessarily implies that the obligation is owed to that entity in question. Analogously, being a 'direct object of moral obligation' does not imply we ought to act for the entity's sake- which, in turn, is not synonymous with being the kind of entity an obligation is owed to.

4.3.2 Contrasting the Four Senses to Moral Status

The four senses to moral status can be contrasted along three dimensions: scope, distribution, and grip.²¹ I believe by contrasting these different meanings, we can distinguish the specific sense/s in which moral status can plausibly be predicated to human dignity.

Scope: The scope of moral status narrows down as we go along from (a) to (d). Moral status according to (a) is expansive in scope; in principle, any entity whether sentient or inanimate may, at a certain point in its existence, qualify as a thing such that how moral agents treat it is morally important. Whereas, (b)'s scope is limited than (a)'s since fewer things count morally in their own right. At the level of substantive moral theory, controversy abides concerning what criterion of adequacy is reasonable to impose for distinguishing things that hold a direct and independent moral importance; but the gist of the idea of "counting in its own right" resembles what is aptly described by the notion of inherent value. Only entities with recognizable interests can be said to have moral status according to (c); and only a subset of what (c) denotes are the sort of entities that can be owed duties (d).

²¹ Meir Dan-Cohen contrasted honor and worth along four dimensions: origin, scope, distribution, and grip. I must say that the contrast I shall lay down between the four different senses of moral status is inspired by Dan-Cohen's brilliant analysis of the distinction between honor and worth. See his "Introduction: Dignity and Its (Dis) content" in Waldron, Jeremy. *Dignity, Rank, and Rights* (Oxford: OUP, 2012): 3-10

Distribution: Adopting (a) is compatible with the notion that moral status maybe a matter of degree, hence distribution of moral status may be uneven or inegalitarian. However, within the category of things that are direct objects of moral obligation (b), moral status is evenly distributed; likewise (c) entails egalitarian distribution but may admit distinction in degrees depending on the substantive moral theory within which (c) is adopted. But (d) implies egalitarian distribution, and admits no distinction between high and low degrees of moral status. This is consistent with suggesting that (d) emerges as the highest end of a distinction in degrees of moral status according to (c).

Moral Grip: (A) allows the distinction between high and low moral statuses, and therefore, reflects either a stronger or weaker moral grip respectively. For some entities whose moral status maybe derived from their use or symbolic value, and since symbolic significance may be granted or withdrawn over time, their moral force will be contingent upon their continued expediency. An object of value to humanity will have its moral importance diminished when its assigned meaning and significance has waned or gets redefined over time. Pursuant to (b), moral status is seem to be conferred to things based on what is constitutive to the sort of entities they are; consequently, the grip that this sense of moral status has on its possessors must be categorical.

Moreover, moral status according to (d) clearly implies a categorical grip; but it is far from clear whether, according to (c), the moral prescription that require us to act for the sake of an entity with moral status would by definition have a categorical moral command. Unless one defends a radical view according to which all interests count equally and demand the strongest moral protection, which to my recollection not even advanced by the most liberal voices in the debate about the moral status of animals, there is little reason to believe that interest based account of moral status confers a categorical moral grip.

Many believe that it is plausible to explain why some interests matter more than others by simply asking whose interests they are.²² Likewise, the toddler-rabbits example is precisely intended to show that our intuitions converge with regard to granting a relatively strong moral weight for an interest possessed by a certain being (say, a being with capacities for self-consciousness and rationality) in contrast to the self same-interest possessed by another entity (that is, a being devoid of those capacities).

²² The obvious ordering of different interests aside, the most important issue here is whether assertion of degrees of moral status between two things A and B can be explained in terms of, and despite, comparable interests that both share.

Following David DeGrazia, one can think of two possible explanatory models that can illustrate why having comparable interests is compatible with a stronger moral presumption against harming a toddler than harming the rabbits: the two models are, *the unequal consideration model (UC)* and *the unequal interests model (UI)*. For any given two entities A and B, *UC* denies that “we should grant roughly equal moral weight or importance to A’s and B’s (prudentially) comparable interests.”²³ It is fair to say that not every pair of, nominally identical, interests are comparable in the relevant sense. For some interests have greater prudential significance to one sort of entity than to another from the standpoint of the entity’s overall wellbeing, hence it is not appropriate to confer identical prudential value to a given interest in every conceivable situation. So to clarify *UC*, what we need is a prudentially comparable interest shared by humans and other sentient animals so that we can explain the case for granting differential moral weight to otherwise prudentially comparable interests of both. Consider experiential wellbeing: all things considered equal, experiential wellbeing can serve as a comparable interest shared across species. Probably the best example is an interest in the avoidance of suffering, which roughly speaking seems to be equally important to humans and other sentient animals alike. For the sake of simplicity, ignore the cognitive and psychological makeup of the sentient being which may profoundly affect the intensity and duration of the experience of suffering—precisely what Jeremy Bentham called ‘felicific conditions’.²⁴ Also ignore the fact that no two entities have identical cognitive and psychological capacities; and furthermore, disregard the indirect effects the suffering of humans and rabbits may have on other individuals, such as families, rabbit lovers, and the moral community as a whole.

Let us now modify our child-rabbits example: say you can avoid killing those rabbits but temporarily incapacitate them with a stun gun, causing them agonizing but momentary suffering. Whereas the alternative would be to leave them be but run the risk of letting the child catch Hepatitis while also having one of its finger slightly bitten by an overexcited rabbit, curable yet at the cost of painful overnight hospitalization. And assume that the nature of experiential harm in both cases is comparable. In spite of the presumption of comparable interests in not suffering, according to *UC*, there still is a stronger moral presumption for intervention in favour of a suffering child at the expense of the welfare of the rabbits i.e., the interest of the child trumps the self same interest of the rabbits. From the premise

²³ DeGrazia “*Moral Status As a Matter of Degree?*”, 187 (emphasis in original)

²⁴ Jeremy Bentham, *An Introduction to The Principles of Morals and Legislation* (Oxford: Clarendon Press, 1907; original 1789)

that having comparable interests is compatible with differential moral weight, the *Unequal Consideration* model can underly that human beings have higher moral status than rabbits.

The other explanatory model for proclaiming that (c) is compatible with the notion of degrees of moral status is called the *Unequal Interest* model or *UI*. It begins with the premise that, no two interests, of the same sort, are comparable in the relevant (prudential) sense. Unlike *UC*, the *Unequal Interest* model declares that comparable interests require equal consideration but prudentially unequal interests must warrant unequal consideration. As with *UC*, with *UI* a stronger moral presumption obtains against killing a human being than killing a rabbit, but for different reasons: the fact that rabbits do have recognizable interest in life notwithstanding, it is quite plausible to think that human beings have a greater stake in life in ways that justify significantly stringent moral protection. From a naive point of view, an interest in life is fairly comparable amongst sentient beings. But, when we contemplate about killing we think of the harm that death brings about instrumentally in terms of the opportunities it forecloses. So, we may ask ourselves: does an entity has long-term projects and relationships? Does it has a concept of the self and of the good life? Is it temporally self-aware? Does it has the capacity for morality? These are some of the central questions that we can ask, the answers to which may tip the balance for determining whose interest in life matters most.

I think, both models for understanding degrees of moral status are likely to share a number of moral judgments, although each appeals to contrasting reasons for the moral judgments that they share. For instance, both confer higher moral status to human beings although many of our interests are also held in common with other sentient beings—some might even say, including our interests in liberty.²⁵ On the assumption that what we want to do with our lives is objectively more valuable, on both models “equal consideration [of comparable generic interests] is consistent with a stronger moral presumption

²⁵ Similarly, it may be argued that not all of our interests are strictly instrumental (in the most technical sense of the term): our interest in liberty is a case in point. And I am inclined to agree with that. Nevertheless, restrictions placed on our liberty are more harmful than placed on rabbits or mice (if there is such a thing as mice's liberty), given the sort of (self-conscious and temporary self-aware) creatures that we are. This is also to say that liberty is more central to our, without having to espouse a strictly instrumental account of liberty *per se*. One may draw a thought provoking parallel with Ronald Dworkin's distinction between "well-being" and "living-well". Our well-being is defined by the goods life has to offer or by what is denoted by the notion of the good life, writes Dworkin. Whereas, living-well designates the performance value, rather than the product that is the "completed narrative" of a life. Dworkin's "well-being"- "living-well" distinction is striking for putting into perspective a conceptual distinction between liberty and interests. If protected interests reflect well-being, so does liberty reflect living-well. Liberty attests to the notion that the "final value of our lives is *adverbial*, not adjectival. It [is] the value of the performance, not anything that is left when the performance is subtracted. " Ronald Dworkin, *Justice for Hedgehogs*, 197; emphasis mine.

against restricting persons' liberty than that against restricting mice's liberty.”²⁶ What this means is partly that, moral status according to (c) does not necessarily entail a categorical grip, nor does it imply egalitarian distribution.

There is but a thin line that separates the *Unequal Consideration* model from the *Unequal Interests* model of (c). *UC* takes into account other morally relevant factors that may be triggered differently in each violation of independently identifiable comparable interests, whereas *UI* maintains that no two nominally identical interests are alike. For *UI*, the individual entity's stake in a certain interest is built in to the very concept of that specific interest; they are inseparable as for example, my interest in life includes all the opportunities a distinctly human life supposedly offers. My life and what I could do with my life are inseparable components to my interest in life, according to *UI*.

I believe, *UI* obscures an important distinction between an interest *per se* and whose interest it is. By adopting *UI* one must also be ready to accept problematic normative consequences: for instance, since they have a greater stake in life children would have higher moral status over elderly people, a healthy person over severely disable person, a research scientist who may potentially discover a cure for cancer over a subsistence farmer, a man of thousand talents over a man with no worthwhile talent.

UC, on the other hand, confronts a logical challenge, which is that it seems contradictory to declare two interests prudentially equivalent then confer stronger moral presumption for one over the other by appealing to moral status constituting reasons, whilst moral status is in turn defined solely in terms of interests. Besides, we have earlier established that, according to (c), being possessed of interests with independent moral significance is the sole ground for possessing moral status. Therefore, given how (c) is defined, we cannot have a consistent basis for distinctions in moral status using *UC* as an explanatory model.

Nonetheless, I think that in itself *UC* is not as such a defective model for elucidating degrees of moral status; but it is rather the meaning of moral status in (c) that proves especially limiting for *UC* to operate. From that observation, two things follow: either we deny the purchase of (c) as a plausible account of moral status while retaining *UC* as an adequate interpretive model for distinctions in moral status or, following *UI*, simply consider those interests unequal in the first place while retaining (c) as an adequate sense of moral status. It goes without saying that, in the context of (c), *UI* appears to be a more attractive model for elucidating unequal consideration of roughly comparable interests.

²⁶ DeGrazia “*Moral Status As a Matter of Degree?*”, 190

I would, however, like to argue that (c) is not the most plausible sense of moral status that can adequately define human dignity and, furthermore, insist that differences in moral status which could help demarcate human dignity must be explained through *Unequal Consideration* model. One of the salient features of being endowed with dignity is the idea that dignity confers unequal, i.e., higher, consideration for the interests of its possessors as opposed to the self-same interests of entities without dignity. This presumption about human dignity sets the stage for the fourth sense of moral status.

Finally, the fourth sense (d) states that an entity has moral status if it is owed duties. And, the question is: what sort of entity can be owed duties? Aren't all beings whose interests have independent moral importance owed duties? My view is that, being owed duties is inseparably tied to discretionary authority or mandate, or moral footing if you will, to exact what one is morally owed to.²⁷ It does not appear to be just a terminological convenience that this peculiar sense of having moral status is called moral standing. To say, then, that something is owed duties correlates to saying that it has rights, which in turn implies that it is regarded as a sort of being to be reckoned with.²⁸ If someone owes me duties, that means he's answerable to me within the purview of whatever is contained in those duties. On the other hand, because of the duties he owes me, I am related to him as a person who has a standing to address him.

Then again, some lingering question still remains: what sort of entity is owed duties? Morris and Warren argue that all beings whose interests have independent moral importance are owed duties, but I dispute that. To declare that an entity's interests command direct moral obligation is merely to claim that the primary reason we have for protecting its interests is for whatever the entity will presumably benefit from our morally constrained actions. However, this does not mean that since we have a reason to act for an entity's sake, our corresponding duty is owed to the entity itself-which would have in turn entailed that it has rights against us. I think, there is a sense in which a being's interests could be a direct object of moral obligations, but it is not owed duties nonetheless. For instance, anti-whaling organizations purport to vindicate their aggressive campaign against commercial whaling partly due to

²⁷ In a slightly different context, Peter Schaber introduced an interesting distinction between "normative authority" and "normative agency"- in the sense James Griffin understands it. Unlike normative agency, Schaber argues that normative authority is not strictly a capacity concept. It can be well understood analogous to legal authority or mandate, only that in our case the authority is conferred by moral principles instead of legal precepts. See Schaber, Peter "Human Rights and Human Dignity: A Reply to Doris Schroeder" *Ethical Theory and Moral Practice*, 17 (2014): 155-161, at p. 160 *supranote* 4

²⁸ On the relation between directional duties and moral rights, see Kamm, *Intricate Ethics*, Chs. 7 and 8

concern for the wellbeing of whales, believing that 'in their own right and for their own sake they give us reason to do things such as not destroy them.' I do not imagine that any intellectually sophisticated activist would reason from having an obligation to act for the whales' sake to the conviction that we owe it to them. That would amount to anthropomorphizing animal welfare. I believe it is more plausible to think that acting for the sake of an entity is meaningfully separable from thinking that the obligations to act are owed to that entity in question.

4.4 High Moral Status and Directional Duties

Earlier I alluded to the notion that *UC* can plausibly model degrees of moral status but only in the context of (d). But, since (d) supports a framework of moral status that is egalitarian in distribution, it appears to be inconsistent to talk of degrees of moral status within the category of beings that have moral standing according to (d). I also have indicated that prescribing to (d) does not preclude (c), that it is not inconsistent to think that (d) obtains as a natural progression from (c). In this sense, considerations of degrees of moral status and the process of discerning (d) from (c) are part of the same package. In fact, it makes more sense to say that all things with recognizable interests have moral status but only those with moral standing can be owed duties. That implies, the interests of those with moral standing sway unequal consideration over the self-same interests of others. It is precisely in this context that *UC* becomes a useful tool for modelling distinctions in moral status.

Prominent writers who preserve the ascription of high moral status/moral standing to beings who can be owed duties include Kant, Stephen Darwall and Jeremy Waldron (with one familiar reservation).²⁹ I take it that being owed duties and having rights are, both intensionally and extensionally, equivalent.

But, it is easy to confuse moral standing and the normative authority that it implies with another closely related concept- moral agency. Some insist that moral standing essentially presupposes moral agency, while others argue that one does not necessarily imply the other ; in any case, the position one is likely to take is regulated by one's understanding of the nature of moral rights.

²⁹ In *Dignity, Rank and Rights*, as well as in at least half a dozen articles he wrote about human dignity, Jeremy Waldron consistently advocates the idea that dignity is a ranking status and it is a legal concept primarily. In the aforementioned book, he noted, "... moral philosophers tell us that dignity is a matter of status. But status is a legal conception and not a simple one." (p. 14) But he is also suggested that the moral concept of dignity can be modeled on the way dignity figures in law. My slight reservation from placing Waldron's conception of moral status (and of dignity) on a par with that of Kant and Darwall owes to his strictly legal approach to the analysis of dignity as ranking status.

In very simplistic terms, being a moral agent implies that one's behavior is subject to moral evaluation. In a nutshell, it involves two things: the first is that moral agents are potential authors of actions that can be considered as appropriate objects of moral evaluation; and secondly, moral agents can be held accountable for those actions by imposing normative standards such as right and wrong, permissible and impermissible, or good and evil. A person can be outcome responsible without being morally responsible.³⁰ Moral agency consists not just in the capacity to be the author of a certain outcome, an outcome that could be subject to moral evaluation, but more importantly it involves the intellectual and psychological capacity to make moral judgments about one's own actions.

Certainly, all moral agents are the sort of entities who can be owed duties. Although not all human beings are moral agents, all human beings are owed certain duties nonetheless. Presumably, toddlers and clinically insane people possess high moral status as human beings, along with the respect and difference that it entails, regardless of the fact that their respective condition have ruled them out of moral responsibility. This supposed difference between moral agency and moral authority is pertinent in explaining the inalienability of human rights as well as in highlighting the inherence of human dignity.

Kant and Darwall, for instance, seem to consider moral agency and being owed duties as two sides of the same coin. Both champion the view that moral standing can make a difference as to whether a being's behavior is subject to moral evaluation. For Kant in particular, whether a being can be owed duties and whether it is capable of morality are essentially two senses of the same question. In other words, moral authority and moral agency presuppose one another. Darwall seems to follow a similar pattern of reasoning as Kant.

In any case, despite the dispute concerning the substance of moral standing, one uncontroversial point stands out: if having moral standing means being owed duties, it then goes without saying that failure to discharge duties implied by one's moral standing amounts to wronging him. It means a moral injury has taken place and that the moral injury is personal. In other words, injury to moral standing can serve

³⁰ Actions performed by a clinically insane person, a child or a sleep walker qualify as outcome responsible but not morally culpable. These are not actions performed by a moral agent (in the case of a sleep walker her moral agency is temporarily suspended), although the persons are causally responsible for the outcomes their actions have brought about- whether good or bad. A child is causally capable of bringing about a morally regrettable outcome without being morally responsible; for example, recently a news came from the U.S. that a mother has been shot dead by her two-year-old son who found a gun in her handbag. For the relevant distinction between outcome responsibility and moral responsibility, see David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), Ch. 4. *Two Concepts of Responsibility*.

as a coercion-legitimizing principle because it takes us beyond ordinary judgments of right and wrong to what is vaguely referred to as the morality of 'harmful wrongdoing' (which I prefer to call simply as "wrongful action").³¹

For the purpose of understanding the meaning of moral status according to (d), I identified two formal structures of 'wronging'. More precisely, "A wrongs B" can mean either one of the following:

- . A violates B's rights, or A fails to perform his directed duties vis-à-vis B.
- . A violates B's rights and in so doing adversely affects B's interests.

The first does not require commitment towards a specific content of directed duties. But the second embodies a disquieting prospect of being partisan towards one side of the debate between choice and interest theories of rights. As I have earlier alluded to, not every instance of a frustrated interest is occasioned by moral wrongdoing. Neither, for that matter, a deliberate dereliction of one's directed duties necessarily involves adversely affecting a specific interest of the right holder and thereby harming him. For sure, failure to discharge one's duties to the other constitutes wronging that person, even in the context in which none of his interests are significantly frustrated. In this case, moral wronging is equivalent in meaning to the notion of moral offense. Some forms of humiliation that are merely symbolic expressions of contempt, but constituting insignificant or no foreseeable harm to their victims, fit this bill. Obviously, a simple violation of the right to liberty is the most striking example of what I'd like to call "harmless but wrongful action". The crux of the matter is that, by introducing the notion of 'harmless wronging' I can disentangle the notion of harm from that of wronging. One may act

³¹ Harm is a tricky concept to pin down; it occupies a porous conceptual terrain. In ordinary usage, it is often entangled, and sometimes confused, with other concepts, such as "wrong", "wronging", "offense" and "injury". In the ordinary sense, harm is defined as "the state of adversely affected interests caused by the other party." There is but a broader sense to the concept of "harm", which does not depend on the nature of its cause. In this broad sense, it seems sensible to talk of a "wrongless harm" in case adverse effects to one's interests are justified by a prior consent or if caused by non-moral-agents (like natural incidents or beings that cannot be held morally accountable). But in the deceptively ordinary, albeit normative, sense of the term, "harm" refers to adverse effects to a person's interests or her liberty caused by wrongful actions. So, we have a broader, prudential sense and a narrow, normative, sense of the concept of harm. For an in depth discussion on the 'harm principle', see Joel Feinberg, *The Moral Limits of the Criminal Law: (Vol. One) Harm to Others; and (Vol. Four) Harmless Wrongdoing* (Oxford: Oxford University Press, 1987, 1988 respectively)

Wrongdoing is another concept that also needs unpacking. Simply, moral wrongdoing constitutes doing something that is morally wrong. In this sense, doing whatever is morally prohibited falls within the purview of wrongdoing. But not every moral prohibition relates to 'harm to others', also not every wrong action is occasioned by violation of a 'directed duty', for it sometimes occurs due to violation of 'indirect duties' or duties *simpliciter*. Violation of a 'directed duty' is a subset of moral wrongdoing we may call "wrongful action (moral wronging)"; and not all harmful actions are wrongful, (as the rabbit example aptly illustrates). Neither does every wrongful action involve harming others.

wrongfully towards someone who's in persistent vegetative state, but given what we know about this medical condition it does appear that in this state one's capacity for self-consciousness is severely diminished and thus it is unlikely that the victim would suffer.

In as much as there are actions that are wrongful but harmless (in the technical sense of harm), so in the same way there are actions that are harmful, hence morally wrong, but not wrongful.³² It is important to note that the idea of personal moral injury is embedded in the very idea of being owed duties, but moral injury and harm do not necessarily correlate.

This is therefore to say that it is more accurate to correlate (d) with wrongful actions than with the notion of harmful wrongdoing. It implies that (d) is compatible with one of the two most basic intuitions about human dignity—namely the notion that indignities are epitomes of wrongful action.

First of all, being endowed with human dignity is not conditional upon any particular display of character or excellence; that is, dignity is not something that can be earned, lost or forfeited. It is rather a state of being (as opposed to a condition), as expressed by the catchy phrase- “dignity is inherent to the human person.” It cannot be lost or forfeited, thus has a categorical grip on its possessor. Similarly, moral status is something that cannot be granted, lost or diminished over time. “For example, if one's moral status makes it impermissible for someone to kill you, you do not lose that moral status merely because you are impermissibly killed.”³³

Secondly, possessing human dignity entails a moral prescription for a distinctive form of treatment to humans. Analogously in ordinary language, a presumption for treating someone as a human being is sometimes used interchangeably with treating her with dignity; for instance, in the face of treatment

³² Suicide, for instance, epitomizes a harmful action—for it leaves sustained and lingering distress on the loved ones, but perhaps not wrongful. Under certain conditions, whereby the act of suicide is unprovoked by unbearable mental distress or a loss of any sense of meaning to one's life, but merely signifies a reckless act by a fully rational person, it is reasonable to say that that act of suicide is morally wrong. In response to such a wanton act of suicide, a stark moral condemnation maybe warranted. One can be harmed by someone else's act of suicide, but, all things remain equal, no one can be wronged by it. Certainly, suicide can be prohibited on the basis that it is harmful. And yet, provided that no one owes his life to another, it would be absurd if one were to claim that he was wronged by another person's suicide, notwithstanding how severely his emotional and mental wellbeing was battered by it. Suicide may, therefore, not count as a wrongful action. The point I am making is merely conceptual in that it proceeds from what we can logically derive (and must accept) from the notion of “moral wronging”, on pain of contradiction.

³³ Kamm, *Intricate Ethics*, 227. This distinction explains away Jeremy Bentham's polemic against Rousseau's famous declaration- “man is born free, and everywhere he is in chains.” Rousseau's claim makes perfect sense when paraphrased as: ‘man is born free, as a matter of status, but everywhere he is found in chains.’ Man doesn't lose his status as a free being simply because he is unjustifiably placed in chains or in the state of servitude.

perceived to be unworthy of a human being, one might express her outrage with a memorable tirade from the 1976 movie called 'Network' exclaiming- "I am a human being, God damn it! My life has value!" Here, two points are worth mentioning for: on the first place, there is such a thing as a violation of human dignity, and secondly, such a violation constitutes personal injury and therefore belong to what was earlier marked as "wrongful action". Obviously, controversy abounds the nature and moral stringency of prohibitions against injury to the dignity of persons. However, there is a strong presumption that violation of dignity is a subset of moral wronging that may not readily be ascribed to minor moral misdemeanours like lying or deception. Therefore, there is a strong moral presumption against

My contention is that, absent a correlation between dignity violations and moral wronging, appeals to dignity merely signify a platitude with negligible significance in normative ethics. Corollary to that, a violation of dignity makes sense only if the victim is a sort of entity with a recognizable interest of its own. However, my assertion to the effect that a being with dignity must have a recognizable good of its own does not necessarily imply that every act of dignity violation must be aimed at undermining a specific interest of that being. For that matter, dignity violations often figure as severe interferences to one's liberty.

To reiterate, I remarked that trying to explain degrees of moral status within the framework of (c) necessarily requires us to adopt *UI*, because only the presumption of unequal interests can justify differences in moral status where the idea of moral status itself is defined in terms of interests. However, *UI* is an inadequate model for delineating dignity constituting status from a lower moral status. If one were to adequately explain human dignity within the framework of degrees of moral status, one must employ *UC* as the fitting explanatory model. This is because, *UC* perfectly illustrates the essential moral difference that the possession of dignity presumably makes. Having dignity essentially tips the balance on whose interests count more than the self-same interests possessed by another. I think, the fact that differences in moral status in (c) cannot be modelled via *UC* indirectly vindicates why (c) is not an adequate description of human dignity as moral status. I would like to, therefore, reiterate my contention that only (d) appears to be consistent with uncontroversial intuitions about the concept of human dignity.³⁴

³⁴ It may now be asked how do the other three senses of moral status fair when contrasted against bedrock intuitions about human dignity? It, seems clear that (a) is immediately ruled out for the obvious reason that it is too broad to isolate entities that have dignity from those that do not, even if we withdraw the "human" out of "human dignity". Moral status according

4.5 Degrees of Moral Status and Human Dignity: Three Concerns

In this chapter, I sought to make a case for two claims. First, I argued that (d) is the most adequate reading of human dignity as moral status. I also ventured on explicating human dignity within the framework of degrees of moral status wherein having dignity implies occupying a higher moral status without, at the same time, denying other beings from having some sort of morally recognizable status. I maintain that appeal to dignity is the most potent and stringent claim of moral status. This would simply mean, for instance, that claims of moral status according to (c) have weaker moral force when pitted against dignity claims. In connection to this, there are two reasonable concerns I should like to consider.

The explication of human dignity within the framework of degrees of moral status may be resisted for at least three reasons. Some may fear that the talk of dignity as high moral status may have a disquieting prospect of reinforcing the dogma of Speciesism. This fear stems from a well documented human susceptibility for injustice, racism, bigotry and other forms of moral corruption; nonetheless, I do not see the trouble in ascribing dignity to entities other than humans as long as those non-human entities are of the sort that can be owed duties. Moral personhood is not an exclusively human trait, it is a normative concept not a biological taxonomy. Any entity can be owed duties in so far as it is capable of morality. Of course moral capacity is a loaded concept; we measure it, and correctly so, in terms of humanistic characteristics. It is often asked if an entity has a conception of the self, a minimally reasonable conception of the good life, psychologically capable of forming complex relationships, and

to (b) meshes well with the first intuition that dignity is inherent, i.e., constitutive to the sort of entity its possessor is, as opposed to being an acquired property of moral significance. But (b) lies flat when contrasted against subsequent intuitions about the nature of human dignity, particularly the one which states that dignity entails a set of moral entitlements and prohibitions owed to those who have it. I reiterate that, we should take seriously the distinction between an entity ‘counting in its own right’ and it giving us (duty-generating) reasons to act for its own sake. I am inclined to think that (c) does not precisely capture the most distinctive feature of being possessed of (human) dignity, precisely the notion that dignified treatment is owed to those who are endowed with it. Since (c) merely stipulates that a being’s moral status gives us a reason to do things for its own sake, in which case one may be duty bound to act solely for the good of that entity without having to owe the duty to it. An appeal to human dignity, on the other hand, presupposes that one is owed duties on account of being human; therefore, the notion of moral status consistent with dignity must contain a provision about duties owed to others.

if it is capable of a moral interpretation of events. These are humanistic, though not exclusively human-Speciesist, characteristics.³⁵

The second reason is the suspicion that, the talk of degrees of moral status may further obscure than illuminate the meaning of human dignity by stripping dignity off its egalitarian foundation. The difficulty is not in mapping where distinction in moral status begins but where it ends. One might ask, by admitting degrees of moral status don't we then, at the same time, unwittingly smuggle the notion of degrees of dignity?³⁶ Consider the following alternative way of explaining away this concern: One may deploy a sufficientarian framework of degrees in moral status, and proclaim that above a certain threshold stands a high (but equal) moral status called dignity. Varying degrees of moral status may figure below a defined threshold based on purely prudential considerations, whereas no distinction is relevant above and beyond the threshold requirement of respect for dignity. It must be underscored that dignity represents the (basic) minimal, not the optimal, moral protection. Accordingly, we can maintain an egalitarian notion of dignity without, at the same time, abandoning the parameters of high and low moral status.

And thirdly, in determining whether moral status has a particular purchase to the understanding of human dignity, the adequacy conditions I deployed effectively narrowed down to one from four possible senses of moral status. In a way, it settles some disputes about the appropriate content of human dignity. For instance, it excludes (inherent) value conceptions of human dignity.

³⁵ It would be unreasonable, not to mention the arrogance of it, to assume that humanity is the only species (beings) in all possible worlds who are capable of morality. If intelligent and morally capable beings from another universe show up, we would not be justified to withhold moral status-hood from them. Moreover, some of our closest biological cousins do have a concept of the self. They probably are capable of a moral interpretation of events, for they seem to have a complex notion of fairness judging by their capacity to form and display what P.F. Strawson calls "participant reactive attitudes"; and they are capable of forming complex relationships, for some do possess a sophisticated moral-psychological makeup as evidenced in their responses to loss and separation. These ingredients are sufficient conditions for the capacity for morality. In the same vein, it is plausible to say that children are capable of morality. What is particularly astonishing is that children can have a deep sense of fairness with a tenacious predisposition and competence for a moral interpretation of events, although they are not (yet) moral agents in the strict sense of the term.

³⁶ What if extra-terrestrial beings, with higher intellectual and moral capacity than us, set foot on earth. Would that mean, we ought to treat each as morally subordinate to them or grant that whatever their distinctive moral system may prescribe holds a firm moral grip on us even if it requires sacrificing humanity for the sake of these supposedly highly evolved beings? Doesn't that create a situation analogous to my rabbits-child example? However alarming the danger of being denigrated to a state of servitude by inter-galactic overlords may appear, if we assume that they have a higher moral capacity then the moral order they would establish cannot fall short of the minimal requirement for respect that our supposedly less enlightened morality upholds. If anything, a higher moral order should enhance and complement ours, not obliterate it.

Methodologically, some may have serious reservations with respect to how one can validly settle substantive differences merely on the basis of formal considerations. Clearly, deriving substantive arguments purely from formal considerations is a tall order. But I think that narrowing the meaning of moral status still leaves key substantive questions unanswered. There are at least three competing status conceptions of human dignity within the fourth sense of moral status (d). For now I leave the discussion at that because it is not within the scope of this chapter to discuss the different conceptions of dignity as moral status.

Having shown that the above concerns do not pose a serious threat to an idea of human dignity conceived within the system of degrees of moral status, it seems to me that status conception is probably the most promising account of human dignity. In the forthcoming chapter, I shall explore different ways of conceiving human dignity as moral status while, at the same time, put forward the grounds for believing that status conception might be the most promising account of human dignity.

4.6 Concluding Remarks

This chapter was tasked to identify an adequate concept of moral status that reflects our settled intuitions about the concept of human dignity. At its very core is found the idea that dignity is a sort of entitlement the possessor of which does have a claim to. One of the basic entitlements that human dignity confers is that the interests of the being with dignity has unequal, i.e., higher, consideration than the self-same interests of others. This is a basic feature of human dignity that is far too often overlooked by scholars who unduly focused solely on dignity's egalitarian appeal.

But when we turn our attention to the immunities it grants and the unique moral purchase that human dignity has, we get to have a better understanding of the need to interpret dignity as moral status. I repeat, dignity's unique purchase rests in the unequal and higher consideration it grants. The dignity of persons is reflected not only in the equal moral footing that each individual stands but also in the loftiness and high regard it affords those which have it as oppose to those which do not. That does not mean human dignity can be an instrument for inequity and oppression. Far from that, the point I am making is, the dignity of one's person is characteristically expressed when used to emphasize that certain things about the person are non-comparable. For example, a person's interest in life may have unequal or higher consideration than a rabbit's interest in life; but analogously, his interest in life and another person's interest in life have equal consideration in the sense that they are incomparable. In a

morally benign situation, sacrificing one's life cannot be outweighed by consequentially saving the lives of many others. By morally benign, I mean the person whose life to be sacrificed is not in any sense involved in the potential loss of the lives of many others whose lives cannot foreseeably be spared unless he is stopped by any means necessary. The point is, human dignity affords one the immunity for his core rights to life, liberty and basic interests from being weighed against another's. This is perhaps what is essentially conveyed by the talk of moral standing, i.e., to understand the moral standing of persons is to underscore their objectivity.

The distinction between in-group incomparability and out-group priority is made sensible by acknowledging that distinctions in degrees of moral status ought to be explained via the *Unequal Consideration* model.

Chapter 5

Human Dignity as Moral Status: Part II, Two Conceptions of Dignity as Moral Status

In this chapter, I focus on two principal approaches at conceptualizing human dignity as moral status. In fact, there are three conceivable approaches: the traditional, contemporary and the archaic approaches. According to the currently prominent contemporary conception, human dignity is a sort of value peculiarly attributed to human beings and “it is typically described with adjectives as ‘inherent’, ‘intrinsic’, ‘inner’, ‘absolute’ or ‘incomparable’.”¹ Whereas, the traditional framework is anchored in the familiar idea of honor as it was developed from the aristocratic conception of dignity as rank, yet it is invariably distinct from a very restricted virtue-ethical sense of dignity championed by the “archaic paradigm”. As its name indicates, the ‘archaic paradigm’ is antiquated and is therefore largely abandoned in contemporary theorizing about human dignity, because it mainstreams, what Jeremy Waldron calls, condition-statuses into the moral baseline as if there were different sorts of human beings characterized by their relative conditions and positions in a hierarchical scheme of moral and intellectual excellence.

Yet, moral status invariably presupposes the moral state of individuals in virtue of “the sort of person they are than on the basis of conditions they have undertaken or fallen into. One's sortal-status defines the baseline from which condition-status might seem a lapse, change or deviation [or enhancement].”² And human dignity designates an equal sortal-status, that is, it speaks of our permanent situation and destiny as human beings. The archaic conception, however, advances the belief that there are sortal differences between persons based on certain conditions they happen to be in. Consequently, it reflects precisely what human dignity is not.

¹ Toscano, Maue “Human Dignity as High Moral Status”, *The Ethics Forum*, 6: 2 (2011): 4-25, at p. 11

² Waldron, “Does ‘Equal Status’ Add Anything to Right Reason” New York University, School of Law, *Public Law & Legal Theory Research Paper Series*; Working Paper No. 11-52 (Aug. 2011) at p.10. I follow Jeremy Waldon’s distinction between sortal and condition status. There is a sense of status “that apply to individuals in virtue of certain conditions they are in” as a result of choice or happenstance, and there is a sense of general status in virtue of the sort of persons they are. “Sortal status represents a person’s permanent situation and destiny” and it “is not acquired or lost depending on actions, growth, circumstances or vicissitudes.” That is roughly the distinction between condition status and sortal status. According to Waldron, against the traditional current of understanding, honor/rank when universalized can be a currency for sortal status; and I am inclined to agree with him. See Jeremy Waldron, *Dignity, Rank and Rights*; p. 57 ff.

We must, therefore, discount the archaic understanding of dignity as implausible, and instead give our undivided attention to the other two, namely the traditional and contemporary paradigms. For simplicity, the contemporary view that dignity is inherently valuable status may be termed 'dignity as worth' and the traditional view according to which dignity is a high-ranking status may simply be called 'dignity as honor'.

Some may, however, doubt the salience of worth as an adequate interpretive notion for moral status. According to Jeremy Waldron, for example, honor and worth have contrasting origins and, for that reason, they inhabit disparate normative settings; he declares that status is synonymous with rank and is primarily a legal concept while worth/value naturally dwells in a normative habitat naturally attuned to morality. Rank and honor have social origins, and their normative function is often codified in social and legal norms of a given society. Worth owes its genesis to conceptual frameworks that aspire to generate universally valid normative principles. Waldron is weary of a conception of human dignity that is anchored in value or worth, for he suspects that arguing abstractly from the value of humanity to specific normative moral principles governing how we ought to treat one another would unwittingly import questionable metaphysical view of the world or some doctrine of natural (moral) law.³

³ Some attempts at justifying dignity as rank also draws on an ontological notion of stature. Human dignity is said to connote an elevated stature of the human species in the natural order of things wherein each entity possesses a distinct standing (dignity) befitting its nature. George Kateb's *Human Dignity* is a textbook example of a defense of equal dignity of persons on the basis of human stature; according to this understanding equal status of individuals is underwritten by human uniqueness. He writes, "[t]he core idea of human dignity is that on earth, humanity is the greatest type of beings – or what we call species ... and that every member deserves to be treated in a manner consonant with the high worth of species." George Kateb *Human Dignity* (Cambridge, M.A: Harvard University Press, 2011): 3. Kateb argues that humanity is unique in that it is the only species that can cultivate "inwardness". In human beings, self-awareness is a very complex process; we have the capacity for abstract thinking and we often inject our conceptualization of who we are into the perceptual frame of the world around us. Furthermore, a fully developed inwardness requires the capacity for language through the medium of which we can articulate and make accessible our otherwise parochial inner 'self-awareness' to one another, and make way for collective endorsement of some conception of the good life.

But, equal moral status of humanity need not rest on the idea of human uniqueness. If beings from another galaxy show up with all the relevant traits for moral personhood, although biologically different from us, should we then assign them a dignity lower than we normally grant to human persons? I think, according to the status conception, it would be preposterous to do so. Of course, to say that 'all men have equal dignity in virtue of being human' is not a mere platitude. Being human is not morally trivial. For example, with Bernard Williams, one may say that being human involves the possession of characteristics that are morally relevant, without being concerned with uniquely human characteristics. In any case, status conception of human dignity is not parforce required to adopt a background notion of human stature, which usually, though not inevitably, lead to objectionable versions of speciesism. For more on speciesism and equality, see Bonnie Steinbock, "Speciesism and the Idea of Equality" *Philosophy*, 53:204, pp. 247-256; Bernard Williams, "The Idea of Equality" in Joel Feinberg (ed.) *Moral Concepts* (Oxford: OUP, 1970): 153-171

Meir Dan-Cohen highlights a companion point when he suggests, in his introductory remarks to Waldron's recent book which he edited, that differences in philosophical origins of distinct concepts gestures towards significant substantive dissimilarities. However, he contends that orienting the discussion of value in contrast with honor/rank yields a satisfactory analysis of the conception of dignity that each concept respectively reflects.⁴ He thinks of worth/value as a more specialized term whose philosophical usage departs significantly from what might be conveyed by its ordinary meaning; whereas, honor is employed for the most part in line with its conventional meaning. Consequently, "[t]his difference in provenance of the two terms signals a more substantive difference in the conception of dignity they each designate."⁵

In contrast to Dan-Cohen, Waldron suggests that honor or rank can be conceived in manners consistent with human dignity's egalitarian foundation. Despite the difference in origin between honor and worth, the dignity of persons that each designate can be rendered consistent with the egalitarian discourse of rights; nevertheless, honor or ranking status is more attuned to dignity's normative resonance in the human rights' discourse wherein both dignity and rights are conceived principally as legal concepts. In any case, Waldron does not rule out that there can be a moral analogue to the legal conception of 'dignity as rank'; in fact, he challenges moral philosophers to seriously consider modelling their conception of dignity on the way it figures in law.

Whilst Waldron does not want to fortify the standard view that, on the broader picture, there is an inner morality of law, he remarks that "[m]aybe every legal idea has a moral underpinning of some sort; but it would be a mistake to think that the moral underpinning has to have the same shape or content as the legal ground."⁶ But if philosophers were to think of dignity as a status, it must take the shape and content other than what obtains by the ordinary usage of worth/value "so that we do not have too simple a picture of dignity as a foundation."⁷ But on the other hand, he recognizes that the conception

⁴ Although the parameters with which he contrasts worth and honor displays striking similarities with Waldron's own effort at contrasting the two, Dan-Cohen deploys the distinction to challenge Waldron's preferred conception of dignity as rank.

⁵ Meir Dan-Cohen "Introduction: Dignity and Its (Dis)content" in Waldron, J. *Dignity, Rank and Rights*, 4

⁶ Waldron, *Dignity, Rank, and Rights*, 19-20

⁷ Waldron, *Dignity, Rank, and Rights*, 21 Waldron has gained notoriety for asserting that status is a legal conception. He contends, "[...the moral philosophers tell us that dignity is a matter of status. But status is a legal conception and not a simple one.... So this is the point I want to begin with: it is probably not a good idea to treat dignity as a moral conception in the first instance or assume that a philosophical explication of dignity must begin as moral philosophy." (Ibid, 14-15) On the contrary, I think, we should not assume that a philosophical analysis of moral status must be structured in the same way

of dignity as worth need not take up the ordinary-language meaning to value; he concedes, if value can effectively be conceived outside of its ordinary usage, it may accord with the idea of dignity as a ranking status.

Elizabeth Anderson captures one facet of the distinction in value when she put forth a promising interpretation of Kant's *Groundwork* definition of dignity as 'value beyond price'. She employs the notion of "commanding value" that seems to bridge the perceived gap between dignity as worth beyond price and dignity as honor or ranking status. Echoing Anderson and Oliver Sensen,⁸ I shall dispute Waldron's claim (which he later seems to retract) that it is conceptually erroneous to conceive of dignity as a status anchored in the notion of value or worth. Although traditionally the value conception is approached independently of, and often times in contrast to, the status conception, against that current, I think certain interpretations of 'dignity as value' envelope basic ideas of what it means to have a moral status, such as the notion that one's value potentially generates directional duties.

I must concede, though, that a sharp contrast between rank and value may figure in the legal discourse on human dignity and Waldron may be right on that score; but it is notoriously unclear as to what moral status precisely implies in normative terms and whether it should be modelled after the legal conception of status as rank or whether it is more plausible if conceived as value beyond price. It is towards that end of settling substantive issues that this chapter will be put to task.

Initially, I was inclined to be more sympathetic to viewing the value conception of dignity rather in contrast with status conception *per se*; but I now should instead like to argue that some ascriptions of value essentially reflect the basic constituent of moral status, in that being inherently valuable generates directional duties. Moreover, both rank and worth can be fitted into morality's egalitarian framework within which the notion of dignity is to be found.

After having established the salience of both rank and worth as adequate interpretive frameworks for dignity as moral status, I shall further explore whether there is a feature of 'dignity as rank/honor' that peculiarly illuminates our understanding of dignity in ways that the value conception does not. Simply

as the legal analysis of status is structured. Similarly, simply because the legal conception of dignity as status is tied up with rank we must not be led into thinking that the moral conception of dignity as status makes sense if only moral status is also interpreted as rank. But there may be other compelling reasons to think that dignity as moral status and the legal conception of dignity as rank share profound commonalities that ought not be overlooked.

⁸ See Elizabeth Anderson "Emotions in Kant's Later Philosophy: Honour and The Phenomenology of Moral Value" in Monika Betzler (ed.) *Kant's Ethics of Virtue* (Berlin: de Gruyter, 2008): 123–145; Oliver Sensen *Kant on Human Dignity* (Berlin: De Gruyter, 2011)

put, the question is: does rank/honor confer a distinctly dignitarian content to some stringent moral prescriptions?

I contend that dignity as rank is a more promising conception for it better accounts for the dualistic employment of dignity in the morality of rights, both as a status for having rights and as the content of some rights. Accordingly, some rights could be direct incidents to our dignity while as their content dignity is also a claim by which we exact respect from other fellow human beings. In respect to that, one may ask how do rank and worth relate to rights: does either way of interpreting dignity generate the same dualistic relation I presume to exist between dignity and moral rights?

It has been argued that dignity serves as a ground/foundation for rights, as a telos or purpose for having rights, as a content of rights, a ground for directed duties (either to the self or others), or simply as constituting rights. Evidently, 'dignity as rank' and 'dignity as worth' relate to rights in quite peculiar and distinct ways; but when we ask which of the above represent a valid and which ones objectionable relation, the judgment is essentially a matter of substantive argument. We must enter into these troubled waters of substantive theory which we have left untested so far; to that effect, I take it that what Waldron calls 'the retail use of dignity' may be of vital significance.

To signal at the direction towards which we are heading concerning the stated substantive issues, I should say that my view gravitates towards the idea that connotations of honor and rank resonate with 'the retail use of dignity' both in rights morality as well as in humanitarian law. For example, ideas of high rank and noble bearing underscore particular norms that prohibit degrading and humiliating treatments. It is fair to say that what the ban on degradation is meant to bring about is treatment comparable or befitting to the rank of nobility- "that conveys things like authority and deference." This describes, in a nutshell, the view defended by the conception of "dignity as rank".

Some might see this as too simplistic a view, or perhaps reactionary in the most unflattering sense of the term, and may instead suggest that making sense of particular prohibitions on degrading treatment is incomplete unless we adopt a foundationalist approach which asserts that rights "derive from the inherent dignity of the human person." Moral outrages against degrading and humiliating treatments presumably take the form of "I am a human being, god damn it; my life has value!", implying that our essential value as human beings justifies, or nullifies as impermissible, certain distinctive ways in which we treat one other.

Claims for a dignified treatment can sometimes be simplified in terms of the 'right's talk': "I am a human being (i.e., a being with dignity), therefore I have fundamental rights." The activity of claiming

rights, as a speech act, takes various forms and the above format maybe the most commonly used. But it proves no more than human dignity being a source of practical reason in the same way having a right is. The expression, 'you ought not treat me this way because my life inherently has value', is logically equivalent to saying 'you ought not do X to me because I have a right that X not be done unto me'; neither of the two indicate that rights derive from the inherent dignity of the human person.

I would, however, like to state my deference to the view that prohibitions against degradation and humiliation are not strictly justified by, but rather constitutive to, our status as beings with dignity. This idea of "constitutiveness" explains the incident-content dualistic relationship between *some* rights and dignity while at the same time vindicates why status conception accords with basic intuitions about the notion of dignity than alternative conceptions do. I shall attempt at a consorted defence of the non-justificatory view at the later stage of this chapter but for now it suffices to register my view on the matter.

To dignify, in the ordinary sense, is to honor or to confer high regard and deference. There is more substance to the accord between the ordinary meaning of the expression "to dignify", which is to honor, elevate or defer to, with status conception of human dignity. I, therefore, maintain that both the idea of status and the modern notion of dignity retain their shared traditional precursor- honor; but here, the status we refer to is moral in its constitution, not conventional.

In the same vein, some proponents of the status conception sought to delineate status and value, suggesting that our conceptualization of moral status will be exact only if we preserve its conceptual alignment with honor, rank or elevation. Following Waldron, they may argue that worth/value does not fit neatly into the categories of moral status. On the contrary, I believe this view is grossly misguided; as I have outlined in this as well as in the preceding chapter, moral status does not preclude value conceptions. Moral status may figure as value or worth, there is no conceptual barrier to that affect. Specifically, if conceived in the Kantian sense, dignity as worth accords with the basic idea of rank and honor. I am, therefore, skeptical only of the overall plausibility of a substantive conception of dignity as moral status wherein status is equated with value or worth in the ordinary sense, effectively excluding Kant's view of dignity from the reach of such skepticism. Nevertheless, I do also resist Kant's conception of dignity on other grounds.

In the following, I explore the conception of dignity as worth as it figures prominently in Kant's moral philosophy. The upshot is that, both the *Groundwork* definition of dignity and the restatement in the *Metaphysics of Morals* share a common currency with the idea of dignity as a ranking status, sharing

striking commonalities than meets the eye to the point of rendering the worth-rank distinction a false dichotomy. But, despite meaningful resemblances, each conception still retains some feature distinctive to itself, which cannot be reduced to the other.

5.1 Dignity as Moral Value

Many scholars who propounded disparate substantive theories of human dignity nevertheless grant that to say that something has dignity means it has some sort of value. Value takes different forms and shapes admitting of plurality of meanings, and the question is: what sort of value is entailed by the possession of dignity?⁹

It is important to distinguish the sort of value that dignity is from other kinds of value. To begin with, dignity represents a value attributed to a thing in virtue of itself, but there are lots of things morally valuable in and of themselves but will be absurd to attribute dignity to them in the same sense as we speak of the dignity of persons. Claiming that something has a moral value in virtue of itself is, at least, to say that it gives us reason for moral deliberation and action. In other words, (“any concrete dimension of”) value generates practical reason (see Raz 1999 & 2011).

Two points are worth highlighting for: first, the above description should not be viewed as suggesting that “being a value” is an exclusive provenance of practical reason; there are other salient sources of practical reason such as interests, entitlements, rights and utility, each of which does perform a moral function. In other words, there can be “demands of practical reason that do not have their source in the values that may be promoted [protected or, at any rate, treasured] by human action.”¹⁰

⁹ A difficulty more acute than plurality of meanings is the fact that a concept of value is deeply entangled with the substantive moral theory within which it is espoused, whereas an attempt to define value in terms untouched by substantive theoretical considerations will be undermined by lack of content therefore does not seem to be a promising starting point for a helpful analysis of the conception of dignity as worth/value. But there is another, better, way of making sense of dignity as value, that is, by doing away with the quest for a razor-sharp analysis of value and instead develop a preliminary account of the concept of dignity as value with which we can assess different views about its nature, grounds, content and normative implications.

¹⁰ <http://plato.stanford.edu/entries/practical-reason/#ConValMorRea> See Korsgaard, C. *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996); Nagel, T. *The Possibility of Altruism* (Princeton: Princeton University Press, 1978); Nozick, R. *The Nature of Rationality* (Princeton: Princeton University Press, 1993); O’Neill, O. *Constructions of Reason* (Cambridge: Cambridge University Press, 1989); Raz, J. *Engaging Reason* (Oxford: Oxford University Press, 1999); *From Normativity to Responsibility* (Oxford: Oxford University Press, 2011)

Practical reason, as a broader domain of what one ought to do, involves thinking about the desirable including the normative domain of the permissible. Both evaluative and normative reflections about what one ought to do respectively occupy the realm of the desirable and the permissible, each functioning within the purview of practical reason. Moral reasoning, as a subset of practical reason, predominantly pivots around actions governed by genuine normative constraints, presumably cashed in terms of ideas of permissibility, duties, entitlements, claim rights, powers and privileges. Moral 'ought' is a function of norms generated in tandem with, yet vindicated independently of, a broader evaluative platform of the desirable (the good). It goes without saying that to live in a world governed by morality is indeed a very desirable state of affair; and yet, not every desirable course of action is required by morality, nor does morality sanction every undesirable state of affair as impermissible. Morality is often contrasted with prudential reasons for action the dictates of which undeniably have some normative force. Although moral 'ought' is not the only normative enterprise in practical reasoning, other things being equal, it certainly is overriding over other competing systems for regulating human action and behavior.

This takes us to our second point, precisely that it is not immediately apparent as to what specific normative consequences do follow straightforwardly from the recognition of value. As a generic term, value/worth is not strictly speaking a normative concept, although it may signal the specific norms that aim to protect and promote it. Incidentally, declaring that something is of 'moral value' is an act of imbuing 'reason' for regulating our relationship with it. Propositions of value generate reason; that is to mean, declaration of value has indispensable explanatory power for laying out our reasons for action, as, for instance, the moral value of a sentient being supposedly explaining why one does or (should) incline to promote its welfare, including not causing gratuitous harm to it. Particularly, it is difficult to distinguish whether the normative consequence of recognizing something as a value is to protect, promote, treasure or respect it.

However, there is a widely recognized sentiment that we can effectively insulate normative consequences warranted by statements of value in light of the source from which worth/value derives its meaning. In other words, satisfactory discussions about value conceptions of human dignity must touch on issues pertinent to how a declaration of the value of humanity derive its meaning from.

Consider the following questions. What makes something, such as dignity, a value? Does worth offer a sound interpretive framework for the conception of dignity that is universal in scope, egalitarian in distribution and stringent in its normative force? If defined as value, does dignity generate directed

duties? If it does, what sort of relationship obtains between dignity and the moral rights presupposed by, and correlated to, directed duties? Does the resulting relationship adequately reflect what is distinctive about dignity, specifically its “retail use” in rights morality?

By far the most promising analysis of value in general, and of the value of humanity in particular, comes from two distinguished scholars of Kant, which is not surprising provided that much of the recent discourse on human dignity draws heavily on Kant’s ethical theory. These two authoritative readers of Kant, namely Christine Korsgaard and Elizabeth Anderson, wrote extensively about the structure of value in Kant’s practical philosophy. It should, therefore, be noted that their analysis of value in Kant’s moral theory sets the prevailing mood for our conceptualization of value in this chapter. So long as value conception of dignity remains inescapably entangled with its supposedly Kantian origin, I believe, drawing from these two authoritative readers of Kant is indispensable.

In a nutshell, what they are telling us is that, if Kant is ever to be considered for a value theorist, then the notion of value must bear a very distinctive and technical meaning displaying little resemblance to our conventional thinking about value.

Korsgaard introduced two analytic distinctions in value, which would help explain Kant’s thoughts on ‘the value of humanity’. Anderson’s work, on the other hand, sheds light on the role of emotions in Kant’s moral theory with a specific emphasis on Kant’s peculiar view of moral motives and how it figures in his conceptualization of the value of humanity. In the following, I will briefly discuss relevant passages from both authors, only to the extent that their respective expositions illuminate our attempt at understanding the nature of moral value and its specific exploits in the discourse on human dignity.

According to Korsgaard, discussions of value frequently miss the point because they generally overlook fairly distinct conceptual terrains. She observes that value judgments come in two fairly distinct layers; from the perspective of the source of goodness (either internal/inherent or external to the object of value) and from the way we value the thing regardless of the source of its goodness. The source of something’s goodness is either inherent, that is to mean constitutive, to the thing itself or extrinsic if conditional upon its relation to other things; but the way we consider it valuable, i.e., how it engages our will, is conceptually distinct from the source of its goodness. Question of the latter sort invites two possible answers: either the value something has is for its own sake (as “final value” or as an end in itself) or the value it has *for the sake of* another thing with which it is related (“instrumental value”).

In her essay- "*Two Distinctions in Goodness*", Korsgaard sought to conceptually delineate the contrast between intrinsic and extrinsic goodness on the one hand and between final ends and instrumental ends on the other. These two pairs of distinction reside at two distinct levels of the ethical theory, although, incidentally, there's a tendency for each category of value at one level to correlate with another at the other level of distinction. For instance, intrinsic value often correlates to final value and extrinsic value with instrumental value. But such correlation merely signals a convenience of thought than a conceptually necessary connection. Correlation does not engender causation. Indeed, it is natural to think that a value inherent to an object commands us to treat it as a final end; but, beyond a convention of thinking that makes it appear evident to mind, inherence has no direct bearing on how something ought to be valued (whether instrumentally or as a final end). Instrumental value is not necessarily correlated to extrinsic value; and, on the flip side, not all intrinsic values generate final ends (for instance, the value of money is intrinsically instrumental).

"To say that something is intrinsically good", declares Korsgaard, "is not by definition to say that it is valued for its own sake: it is [merely] to say that it has its goodness in itself."¹¹ To illustrate this point, we may draw analogy with aesthetic value, which I believe takes up a similar structure to moral value. Here, one should not conflate the assertion that the value of art is essentially relational to how it is made with a recognition that its value is extrinsic. On the contrary, I believe art's relational nature is constitutive or intrinsic to itself in the same way the value of friendship is inherently relational.¹²

But, how we value a work of art is entirely a different matter. We marvel at bewitchingly beautiful works of art, as there are purely aesthetic reasons for appreciating them. Yet, it is not utterly outlandish if we were to think that works of art enrich the advancement of some perceived human goods like happiness, mental health, or perhaps for some sort of desirable political or spiritual awareness, or maybe valued as a mark of civilization and of high culture.

It is one thing to claim the source of art's value is internal/inherent to itself but it is entirely another thing to prescribe that art ought be valued "for its own sake". One can value and treasure art as a vocation, and thereby engage in artistic creation for no end other than for the creative endeavor itself. It is exactly in this sense that one may declare: "if you make art solely for the sake of money, it isn't art",

¹¹ Korsgaard, Christine "Two Distinctions in Goodness" *The Philosophical Review*, 92: 2 (Apr. 1983): 169-195

¹² I can consider someone, even an inanimate object such as a book, as a friend without him reciprocally considering me as a friend. But I cannot thereby claim to have a friendship with him unless there is a mutual recognition of the relationship. I must come to know that he thinks we are friends and that he knows that I know, and vice-versa.

or mildly put ‘the value of art transcends its market price’. This may describe the appropriate motive that presumably animates the creative impulse of the vast majority of artists, but each individual work of art has no end of its own- that it does not benefit from its existence or in its preservation; thus we cannot value it for its own sake.¹³ Such a distinction aptly illustrates the absurdity behind this seemingly self-evident adage- ‘art for art’s own sake’. Despite its obvious appeal in romanticizing art as a noble pursuit, there is little substance to the adage that one ought value art for its own sake.¹⁴

The point is, to say that art has its goodness in itself is not the same thing as saying that it must be valued for its own sake (as if it has the power to set ends for itself). A similar distinction also applies to moral values.

Analogous, Elizabeth Anderson captures one facet of Korsgaard's two distinctions in value in her insightful analysis of value, its basis, and how propositions of value engage us. “This is the fact that”, claims Anderson, “values appear to us in two dramatically different forms, as appeal and as command [MM6:379–80]. Appealing values constitute the domain of the good, commanding values the domain of the right.”¹⁵ Appealing values engage our desire to want to fulfil or preserve them, whereas commanding values engage our will in a certain peculiar way, i.e., they constrain us. We act upon commanding values because we feel we must, in accordance with the authority of the normative principles governing them, whether we found them appealing or happen to feel like it, or whether we could psychologically bring ourselves to value them.

Appealing values do not confer a fundamental motivation to be moral for they lack a constraining authority over us, although they can be objects of our inclination, needs or desires, and thus are

¹³ We must not conflate art as a vocation, discipline, or at any rate as a human endeavor, with concrete (individual) works of art themselves, as if what holds true for the one would equally apply for the other. By ‘concrete’ I do not mean “existing in a material or physical form”; otherwise, I would have to exclude poetry, music and dancing from the household of art. The notion of “purposeless purpose” that Kant famously dubbed aesthetic experience in his *Critique of Judgement*, invariably serves to describe the aesthete. He may think of the value of aesthetic experience as the experience itself, therefore final as opposed to instrumental.

¹⁴ This is not to contradict the prevailing view amongst artists, nor to diminish their noble thoughts and aspirations about this fascinating vocation, to the effect that art’s value is essentially a function of the interplay between the creative performance and the aesthetic worth of the final product, i.e., the work of art, in contrast to its market value. This sentiment is vindicated by the fact that a digital copy of Van Gogh’s *The Starry Night* or a 3-D printed sculpture of Leonardo’s *David* would have little or no aesthetic value.

¹⁵ Elizabeth Anderson “Emotions in Kant’s Later Philosophy: Honour and The Phenomenology of Moral Value“ in Monika Betzler (ed.) *Kant’s Ethics of Virtue* (Berlin: de Gruyter, 2008): 123–145, at p. 123

appropriate objects of what Kant aptly described as hypothetical imperatives. Commanding values, however, reflect the essential nature of moral obligations, as for instance articulated in terms of the demand to respect the dignity and autonomy of every rational being (GMS 4:428 ff).

Now the question is: if dignity is a value, then what sort of value it is? Kant understands value in binary terms; a case in point is his assertion that “[i]n the kingdom of ends, everything has either a price or a dignity. If it has a price, something else can be put in its place as an equivalent; if it is exalted above all price and so admits of no equivalent, then it has a dignity....” Price designates the value things have for us, based on our judgment of how meaningful it is to pursue them, according to reason; whereas dignity represents the value of things beyond measure, i.e., the incomparability and inviolability, of for instance our own value.¹⁶ Things with price (or market value) can be measured, contrasted and can possibly be traded-off, as they constitute the things that make up the good life. Dignity, on the other hand, is something that cannot be quantified or swapped with an equivalent, that it is incomparable, therefore occupying a normative realm quite distinct from the familiar understanding of value in prudential terms, as a goal that's worth pursuing. In the passages where Kant defines dignity as incomparable value, the notion of value is redefined to connote a peculiar meaning compatible with his unique way of conceptualizing about morality.

Price is attributed to things that are appropriate objects of our desire or inclination, and it corresponds to what Anderson calls "appealing values". This sense of value is strictly prudential, or it designates what Korsgaard calls instrumental goodness. For that reason, things with price do not generate categorical but hypothetical imperatives. Dignity, on the other hand, constrains our action in some distinctive ways towards those possessed of it. It is a sort of value that is an appropriate object of respect, that it is incomparable, therefore trumps all other things with mere price. In Korsgaard's lexicon, to be possessed of dignity implies being a final end as opposed to having an instrumental value. It is, therefore, not without reason that one of Kant's formulations of dignity has it that humanity is an end.

5.1.1 The Value of Humanity (a): Humanity as an End

¹⁶ Things can be valuable *for* us in two different ways: prudential values that serve our interests, needs or desires, on the one hand and things we deem valuable (that we admire and appreciate) on the other- which Kant subsequently distinguished as market price and fancy price respectively. Consequently, Kant speaks of three kinds of values, prudential (pragmatic), aesthetic and moral.

Consider the following passage from Kant's *Metaphysics of Morals*:

"[every] human being regarded as a person, that is, as a subject of morally practical reason, is exalted above any price; for as a person...he is not to be valued merely as a means to the ends of others or even to his own ends, but as an end in itself, that is, he possesses a dignity (an absolute inner worth) by which he exacts respect for himself from all other rational beings in the world. He can measure himself with every other being of this kind and values himself on a footing of equality with them." (TL 6: 434-435)

In the above passage, it seems evident that Kant's reference to dignity (as an absolute inner worth) is cashed in terms of two familiar ideas: One such idea is that, regarded as a person, every human being is a final end and must not be treated merely as a means; and secondly, possessing dignity is synonymous to the familiar idea that the moral law confers every rational person moral self-determination, encompassing the 'normative authority' by which "one exacts respect for himself from all other rational beings in the world".

Meir Dan-Cohen observed that one of "Kant's great moral insights is the idea that moral content can be derived from purely formal considerations."¹⁷ For that matter, another fascinating attribute that imbues Kant's moral philosophy with unrivaled originality is his ability to embed peculiar meaning to moral concepts in ways that reflect a radical shift of perspective- quite comparable to his Copernican Revolution in epistemology. A case in point is what Kant says about "ends" when describing the sense in which humanity (*menschheit*) can be regarded as an end, which he evidently described not as end to be sought or generated but a "self-existent" end.

In general, for Kant, an end is anything that "serves the will as the (subjective) ground of its self-determination" (GMS 4:427). In practical life, each person forges a distinctive identity for herself in virtue of the values she thinks worthwhile to pursue, the goals she seeks to achieve, and through the guiding principles, norms and ideals that she deems constitutive to her personality. In this sense, an end would, for example, encompass the things in the pursuit of which one does by trade or inclination. Recognition of ends of this sort may lend itself to a normative requirement that any good that produces a perceived worthwhile life ought to be permitted, promoted and protected, to the extent that doing so would not involve harming others or obstructing them from the pursuit of their respective worthwhile

¹⁷ Meir Dan-Cohen "A Concept of Dignity" *Israel Law Review*, 44: 1-2 (Jan. 2011): 9-23, at p. 17 <http://dx.doi.org/10.1017/S0021223700000947> (About DOI), Published online: 30 January 2013

goals. And this very fact of having any ends at all presupposes "the power to set an end...any end whatsoever" (GMS 4:392), and "quite apart from their content, attests to our own value, and so provides a foothold for a system of moral values designed to acknowledge this value and gives substance to this acknowledgment."¹⁸ Our value does not as such depend on the specific content of the ends we seek, or on the content of our personality essentially presupposed for the creation of any desired state of affair; our value must, therefore, be independent, objective and universal.

Humanity is not a sort of end to be pursued; it is but, in Kantian terminology, a "self-existent" end. In considering, that is in treating, humanity as an end, Kant is not attributing to humanity the ordinary connotations of "end" but had in mind something akin to being a "self-originating source of reason for action." Humanity itself is not a goal to be achieved, notwithstanding the fact that Kant has cashed the 'humanity in the person' essentially in terms of certain generic capacities for reason, both theoretical and practical. The core of our humanity is our rational nature, declares Kant. It encapsulates the capacity to set [intelligible] ends and the capacity to be governed by maxims or principles which would be recognized by all rational beings (universalizable maxims), "that is, as a subject of morally practical reason."

The following excerpt from Kant underscores the primacy of morals (value as an end in virtue of which one can exact respect) over axiology (the philosophical study of value as an end to be pursued and promoted). He writes, it is "the moral law that first determines and makes possible the concept of the good, insofar as it deserves this name absolutely" (KpV 5:64). Moreover, the groundwork passage on the same topic highlights the same point, where Kant declares:

"For nothing can have worth other than that which the law determines for it. But the lawgiving itself, which determines all worth, must for that very reason have a dignity, that is, an unconditional, incomparable worth; and the word respect alone provides a becoming expression for the estimate of it that a rational person must give" (GMS 4:435-436)

In his description of the "kingdom of ends" where he distinguishes a relative worth, that is, a price, in contrast to an inner worth, that is, dignity, Kant attributes the latter to various but interrelated things. For Kant, dignity refers to (1) humanity or rational nature (at GMS 4:435-436); (2) morality or the moral law (at GMS 4:425 & 435-436; KpV. 152; (3) persons as rational beings (GMS 4:433-34); (4)

¹⁸ Meir Dan-Cohen "A Concept of Dignity", 17

persons as law-making members in the kingdom of ends (GMS 4:434 & 439-40); and (5) moral disposition or a 'moral cast of mind', as reflected by the will to act for duty's sake (GMS 4:435).¹⁹

First, the *Formula of Humanity* prescribes that you ought to “act in such a way that you treat humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.” Then, in the Doctrine of Virtue (*Tugendlehre*), Kant reasoned: “[F]or a human being can not be used merely as a means by any human being but must always be used as an end. It is just in this that his dignity (personality) consists, by which he raises himself above all other beings in the world that are not human beings and yet can be used, and so over all things.” (TL 6:462; Sensen 2012: 175) If, as Kant says, the dignity of persons consists just in the injunction to treat persons always as an end, then the justification for respecting the dignity of humanity must converge with the justification for the *Formula of Humanity*.

As I have indicated earlier, there are two elements to Kant's argument for the dignity of persons; one that underlies the idea of humanity as an end, and the other establishing the normative authority of rational beings to exact respect from all other rational beings in the world. To that effect, Kant puts forward a number of arguments that are characteristically intertwined that it would be difficult to tell which argument pertains to the justification of humanity as a final end and which ones to humanity as normative authority.²⁰ And it is for that reason that any critical appraisal of Kant's conception of the dignity of persons must take a holistic approach.

That being said, there is but one notable argument attributed to Kant where he appears to put forth a specific argument for the idea of humanity as a final end. Korsgaard subsequently calls it the *regress argument*. According to her reconstruction of Kant's defense of 'humanity as an end':

“[Kant's] idea is that rational choice has what I will call a value-conferring status. When Kant says: “rational nature exists as an end in itself. Man necessarily thinks of his own existence in this way; thus far it is a subjective principle of human actions” (G429), I read him as claiming that in our private rational choices and in general in our actions we view ourselves as having a value-conferring status in virtue of our rational nature. We act as if our own choice were a sufficient condition of the goodness of its object...If you view yourself as having a value-

¹⁹ For a complete list of references to Kant's texts regarding his attributions of dignity to different things, see Thomas E. Hill Jr. "Humanity as an End in Itself" *Ethics*, 91:1, pp. 84-99, at p. 91

²⁰ Kant routinely uses the idea of “the humanity in our person” as synonymous to “the dignity of persons.”

conferring status in virtue of your power of rational choice, you must view anyone who has the power of rational choice as having, in virtue of that power, a value-conferring status...Thus, regressing upon the conditions, we find that unconditioned condition of the goodness of anything is rational nature, or the power of rational choice. To play this role, however, rational nature must itself be something of unconditional value—an end in itself. This means, however, that you must treat rational nature wherever you find it (in your own person or in that of another) as an end.”²¹

Two types of objective value emerge from the elucidation of the "regress argument": one relates to the objective value attributed to our subjective aims due to the power of rational choice, and the other to the unconditional, absolute worth of our rational nature itself. The most interesting point that the regress argument makes is that, whilst the formula of humanity regulates the pursuit of ends by identifying ends consistent with it as objectively valuable hence morally permissible to pursue, the formula does, in turn, emerge within the theory of values (ends).

Furthermore, one can imagine broader implications of the "regress argument." For instance, it helps explain two defining features of morality as Kant understands it; these are the presumptions that morality is pervasive and that it is overriding. Morality is pervasive, that is to mean, “[f]or nothing can have worth other than that which the [moral] law determines for it”, there is no sphere in practical life wherein moral norms do not apply; and it is overriding in the sense that mandatory moral prescriptions, such as the requirement to treat humanity as an end, cannot be defeated by any amount of goods that may otherwise be realized by refusing to perform the action prescribed by the moral law.

5.1.2 The Value of Humanity (b): Dignity as Normative Authority

Stephen Darwall states that, for Kant, normative authority is a key presupposition for having any set of moral obligations at all. The notion of normative authority has two facets: on the one hand, it expresses the prerogative each person has to self-legislate and self-impose duties upon himself, which I shall call

²¹ Christine Korsgaard, “Kant’s Formula of Humanity” in *Creating The Kingdom of Ends* (Cambridge: Cambridge University Press, 1996): 122-123. There are a number of points within the “regress argument” that some scholars have taken issue with. For a comprehensive critical reading of Korsgaard’s own argument see John Garthoff “Mimicking Korsgaard” in Pablo Muchnik (ed.) *Rethinking Kant: Volume 2* (Cambridge: Cambridge Scholars Publishing, 2010): 122-155

'moral self-determination', and, on the other hand, it expresses the authority or moral jurisdiction one possesses in order to hold others to account for how they treat him. Moral self-determination and the 'authority to demand' are two sides of the same coin, as Kant construed them.

"I am under obligation to others", argues Kant, "only insofar as I at the same time put myself under obligation, since the law by virtue of which I regard myself as being under obligation proceeds in every case from my own practical reason" (TL 6:417- 418). Similarly, each person must regard himself "as a person who has duties that his own reason lays upon him" (TL 6: 435) He adds, "[b]ut the self-imposition seems to be the result of the fact that the [moral] law is one that constitutes the very nature of the will."²² In other words, moral obligation is constitutive, not antithetical, to our freedom; it reflects rather than constrains the very nature of the autonomy of persons. One, therefore, exercises his normative authority (in this sense, his moral self-determination) when he imposes duties upon himself according to reason.

Analogously, the legitimate claim I may have on others must at the same time proceed from their own practical reason. For, according to the first formulation of the Categorical Imperative, I ought to "act only according to the maxim through which [...] [I] can at the same time will that it should become a universal law." As my practical reason must proceed from the standpoint of the universal moral law, so must everyone else's.

The idea that rational persons must justify their treatment of each other to each other is a further extension of the injunction to act according to the maxim so that one's will becomes a universal law. Such a maxim is substantively equivalent to saying- "we [ought to] accept and comply with moral demands we think it sensible (reasonable) to make on everyone from the shared standpoint of a community of equal free and rational persons."²³ If I demand that others respect my person, I must at the same time will that it should become a universal law. This disposition comports with Kant's general assertion regarding the principle of respect, in which he states that "[e]very human being has a

²² Thomas Christiano "Two Conceptions of The Dignity of Persons" in *Jahrbuch für Recht und Ethik [Annual Review of Law and Ethics]* (Berlin, Verlag Duncker and Humbolt, 2008) : 101-26

²³ Stephen Darwall, *The Second Person Standpoint: Morality, Respect and Accountability* (Cambridge, M.A.: Harvard University Press, 2006) , 118

legitimate claim to respect from his fellow human being and is *in turn* bound to respect every other” [TL 6:462].²⁴

Duties of (mutual) respect require us to constrain our attitudes and behavior in ways that comport with the recognition of the dignity of persons, that is, as beings who can set their own ends according to reason, who possesses "the quality of being [one's] own master (*sui iuris*)", whose agency is above all price, whose self-esteem must not be sacrificed for the pursuit of the ends of others or even to his own ends, and who stand on a foothold of equality with every other human being. The necessary attitude of respect entails the recognition of "a human being beyond reproach (*iusti*), since before he performs any act affecting rights he has done no wrong to anyone." (TL 6:238).

When elaborated as such, the mandatory respect fitting to dignity is akin to what Stephen Darwall calls "recognition respect". Simply put, "we respect something in the recognition sense when we give it standing (authority) in our relation to it."²⁵ In particular, respect for the dignity of persons must consist in recognizing each person's standing or authority to address demands as persons to other persons. The "humanity in our person", writes Kant, "is the object of the respect which [we] can demand from every other human being, but which [we] must also not forfeit" (TL 6: 435).²⁶

On the one hand, the value of our humanity entails directional duties that we owe to each other, and for which we exact respect from one another, and on the other hand, "[c]onceived in Kantian terms as "common laws" for a "kingdom of ends"..., moral requirements structure and give expression to the

²⁴ Emphasis mine. The same thought is expressed when Kant says, "I can recognize that I am under obligation to others only insofar as I at the same time put myself under obligation." For that reason, 'a legitimate claim to respect' must be according to which each person „can measure himself with every other being...on a footing of equality with them“. So the requirement- ‚each human being is in turn bound to respect every other’ is deduced from the general structure of moral obligations.

²⁵ Darwall, *The Second Person Standpoint*, 123 He identified two types of respect: a respect accorded to superior merit which he called appraisal respect, and recognition respect which concerns "not how something is to be evaluated or appraised but how our relations to it are to be regulated or governed". (Ibid)

²⁶ From the recognition of the humanity in our person Kant also derives negative duties to oneself. The prohibition of suicide is a case in point. In forfeiting life one thereby treats one's own humanity as a mere means, as if it is something to be discarded when perceived to have outlived its usefulness. Furthermore, "self-esteem is a duty of man to himself", which he should not disavow by fronting a servile self-bearing, but must always pursue with "consciousness of his servile moral predisposition" (6: 435-6). "Be no man's lackey", enjoins Kant. "Bowing and scraping before [others is to behave in the manner] unworthy of a human being...one who makes himself a worm cannot complain afterwards if people step on him" (6:436-7); see also Thomas E. Hill Jr. "Servility and Self-Respect" *Monist* 57 (1973): 87-104

distinctive value that persons equally have: *dignity*, a "worth that has no price".²⁷ Moral requirements reflect our dignity or authority "even when the content of those demands extends beyond the treatment of persons", but "we respect our dignity as persons more specifically when the demands concern how we must treat one another."²⁸

Kant has repeatedly emphasized that dignity generates duties of "respect", where respect is in turn defined as a becoming expression for the dignity of persons. What, then, is the normative relation between respect and dignity? Respect for the dignity of persons manifests in various ways: we respect someone's dignity when we respect the rights that are constitutive to his dignity, specifically rights pertaining to the treatment of him as an end, in addition to those rights protecting his normative authority. The list would surely include the right not to be subjected to degrading, dehumanizing and humiliating treatments, as in the case of slavery and torture. In regard to that, respect resembles what Michael Rosen aptly calls "respect-as-respectfulness"- "which has to do with avoiding the imposition of specifically dignitary harms like insulting and degrading treatment."²⁹

Thomas Christiano captures the essence of respect for dignity when he writes, "there is a mandatory quality to the relation of attitude to dignity." The rights stipulated as paradigmatic violations of dignity typically concern with expressive or symbolic harms, although the violation of some of those rights does involve more than just the violation of dignity. In Kant, there is a distinctive logic that characterizes the relation of the attitude of respect to dignity. Drawing from Thomas Christiano, we can describe it as: "[t]he idea is that the relation of the attitude of respect [...] to things with dignity [...] is a mind to world direction of fit. In contrast, the relation of desire to things is a world to mind direction of

²⁷ Darwall, *The Second Person Standpoint*, 120 In a recent article, Darwall distinguishes two kinds of second-personal moral obligations: moral obligations period and bipolar obligations. The first encompasses moral obligations the demands of which extends beyond the treatment of persons, whereas bipolar obligations involve an exclusive set of obligations that pertain to "what we owe to each other". When we lay blame for moral wrong doing, either on behalf of others or when no person is particularly harmed by the wrong action, "we implicitly address a demand, not at our discretion, but as a representative person, on behalf of the moral community as it were." That is to mean, "moral obligations period analytically entail a second-personal authority we all share as representative persons or members of the moral community." Darwall "Bipolar Obligation" in *Oxford Studies in Metaethics* V. 7 (Oxford: Oxford University Press, 2012): 333-367, available online: <https://philosophy.sas.upenn.edu/sites/www.phil.upenn.edu/files/events/2011/Darwall%20Bipolar%20Obligation.pdf> at p. 12 and 15. Subsequent reference from this article follows the page number from the online version.

²⁸ Darwall, *The Second Person Standpoint*, 120

²⁹ Jeremy Waldron, *Dignity, Rank and Rights*, 143

fit.”³⁰ That is to mean, our attitude of respect [to the thing with dignity] must be suited to the value that is already represented in the world. Whereas, our desire for the good need not necessarily correspond to the world as it is, for we may be justified in calling for a change in the world so that the world we live in shall reflect our aspirations, i.e., the desires and wishes in the mind, according to a broader framework of the good life. Christiano likens the correspondence between respect and the way the world is to the manners in which belief must comport with reality (in order to be justified). Respect for the dignity of persons should not presuppose a world other than the one we live in any more than a belief in unicorns can be justified by the contemplation of a conceivable world in which unicorns might be real. The point is simply that man has to be respected in society at least in equal measure as the treatment he would be entitled in the state of nature; but this is not an argument against striving to change oneself and the world to the better.

Respect is to dignity in the same way admiration is a fitting response to praiseworthiness; both involve the notion that something is due to the person possessing the corresponding traits. The only difference is that praiseworthiness or esteem is principally governed by principles of propriety and decency than by some norm a moral agent is required to behold. It is indeed a character defect if a person refuses to grant esteem /appraisal respect to a person of merit. The person who’s unmoved by merit may deservedly be branded as boorish and uncharitable but that, nonetheless, is not a moral defect. But failure to respect a person's dignity, regardless of whether he’s meritorious or otherwise, indicates a moral defect on the part of the person who disinclines to accord respect. Christiano sums it up thus: “Goodness gives us adequate reason to desire but not sufficient reason. Dignity gives us mandatory reasons to respect and merit gives us sufficient reason to admire [esteem or accord *appraisal respect*].”³¹

To respect is to defer, honor or venerate,³² and according respect to others is “to be understood as the *maxim* of limiting our self-esteem by the dignity of humanity in another person, and so as to respect in the practical sense”, a duty “strictly speaking only a negative one” (TL 6:449). Kant stipulates three

³⁰ Thomas Christiano “Two Conceptions of The Dignity of Persons”, 103

³¹ Thomas Christiano, “Two Conceptions of The Dignity of Persons”, 103

³² Kant contrasts *Reverentia*, a subjective feeling of respect, with *Observantia* or respect in the practical sense, a form of respect that follows from the agent’s *maxim*. The duty of respect primarily concerns *Observantia*, although acting from the duty of respect invariably involves the phenomenal sense of respect, i.e. *Reverentia*. So far as I can see, what Kant meant is that, although not constitutive to it, *Reverentia* is not antithetical to *Observantia*.

specific vices that typically violate the duty of respect: arrogance, defamation and ridicule. Committing one of these three vices involves arrogating to oneself, and the likes of oneself, greater 'self-esteem' simply by demanding others "think little of themselves in comparison with [one]" (TL 6:465). Holding others in contempt (arrogance or self-conceit), or disseminating information about others that induces public disrepute (defamation) for the purpose of pure gloating at their disgrace while rendering them objects of mockery and derision (ridicule), for Kant, constitute paradigmatic disrespects to their dignity. Many instances of degrading and humiliating treatments, for example, epitomize familiar ways of committing these three vices.

Self-conceit, declares Darwall, is "a fantasy about second-personal status". He adds, it is a pretence as if one has dignity independently of the universal moral law; a self-conceited person violates the formula of humanity by making an exception for himself "as if one's own will is a source of normative reasons (and is so uniquely)" while treating others as if they lack the same standing.³³

Darwall on Dignity as Moral Authority. Before bringing this section to a close, I should like to say few things about "dignity as moral authority" as particularly conceived by Darwall. Although admittedly his authority-based conception of morality is deeply rooted in Kantian constructivism, his view differs from Kant in a number of ways. In the first place, Darwall considers moral authority as an adequacy condition for testing whether a subjective moral demand carries genuine obligation. When an addresser advances a claim over the things she has discretionary authority, Darwall argues, she must at the same time impose a subjective test for legitimacy, that is, "[s]he must think that her addressee has the same basic authority to blame himself that she has to blame him."³⁴ Consequently, Darwall infers that moral obligations are grounded in that authority.

³³ Darwall, Stephen *The Second Person Standpoint: Morality, Respect and Accountability*, 135.

³⁴ Darwall *The Second Person Standpoint: Morality, Respect and Accountability*, 250 I think there is little controversy over the presumption that, in order to lodge a legitimate moral demand on another person, in general, one must commit to certain assumptions about that persons, specifically concerning her capacities to regulate her will. I take it that, such an assumption is an important ingredient to the analysis of "morality as accountability", as Darwall also intends to demonstrate a marked difference between coercion and moral accountability. But why should I have to assume that my addressee must have the authority to blame himself, as I would blame him, in the event of non-performance of the obligation he owes me?

I think Darwall confuses moral demands with reactive attitudes, because the legitimacy of moral demands is lexically prior to, and thus independent of, the reasons that govern blame and other reactive attitudes. It, however, seems to me that, in order to settle the question whether a certain substantive moral demand is justified or not, the addressee's point of view about distribution of the authority to blame must be beside the point.

I think, being possessed of dignity includes, what one might declare with Feinberg as, the capacity “to look others in the eye and to feel in some fundamental sense the equal of everyone”.³⁵ In addition, I believe that Feinberg’s forthright identification of dignity with the capacity and standing to claim something as one’s due is very close to the theory of human dignity that I defend as plausible, but it needs further elaboration. Darwall's seems to hold a similar view when he later advances a more expansive interpretation of the dignity of persons. He writes,

“The dignity of persons...is the complex whole that comprises all three of the following: the substantive mandatory norms regarding conduct toward persons, the standing to demand compliance with these as one among mutually accountable equals, and valid demands that are grounded in this authority.” (Darwall 2006: 244)

The conviction that dignity grounds moral obligations obtains from the above expansive reading of dignity, but only on the assumption that substantive mandatory norms presuppose second-personal authority. Arguing as such, Darwall demonstrates that the grounding of moral obligations and the stipulation of substantive norms protecting dignity or moral standing are part of the same package. My concern with Darwall's view is not that it leaves out some legitimate claims of respect for dignity; instead, I should like to challenge his theory on the grounds that it shows too much. What I am concerned is a particular problem I'd like to call 'trivialization of the concept of dignity'. On the premise that violation of a right also affronts the ground on which it stands, Darwall's theory leads to an absurd conclusion that every violation of rights is at the same time a violation of dignity.

Suppose, for example, a rowdy person steps unbidden on my foot. Although I do have a legitimate reason to think my personal space invaded and my authority over what others could do with my foot undermined, I think it be trivializing dignity if I were to cry foul over this incident as a violation of my dignity especially if I could simply protest into having him remove his foot. Violating my dignity involves more than a simple act of stepping on my foot, it has to do with the manners in which he does that and the correlating intentions and attitudes involved within such a blatant invasion to my bodily integrity. This is not to say that his simple act of stepping on my foot is not morally blameworthy, it certainly is if intentional. Respect for persons certainly includes that others not step unbidden on my foot, but my concern is that if combined with "the conceptual point that dignity requires respect for

³⁵ Feinberg, Joel “The Nature and Value of Rights” in his *Rights, Justice and The Bounds of Liberty: Essays in Social Philosophy* (Princeton, N.J: Princeton University Press, 1980), 151

persons—these [considerations] might lead one to conclude that dignity is the foundation of all rights and of almost all important duties that we owe to other people."³⁶

There is a rather distinct thin-line that separates the generic notion of 'respect for persons' from respecting their dignity. Dignity requires respect for persons; but respect for persons inscribes a wide variety of duties, some of which are certainly fundamental as respect for the dignity of persons. One may, with Jeremy Waldron, state that "[d]ignity is not the whole story of what we most fundamentally owe to others; it is not the whole story of the wrongness of killing, for example, nor...is it the whole story of the wrongness of torture."³⁷ And I am inclined to agree with that.

Finally, I must say that both Kant and Darwall have defended theories that sufficiently meet the two conditions for an adequate status conception of human dignity: that is, both reflect the idea that dignity implies duties owed to persons and those duties are egalitarian in distribution (though some scholars argue that Kant restricts the attribution of dignity only to a subset of the human species, i.e., to "rational persons").³⁸ Despite their enormous potential in becoming sound theories, both conceptions of dignity

³⁶ Waldron, *Dignity, Rank and Rights*, 143

³⁷ Waldron, *Dignity, Rank and Rights*, 143 But Waldron went too far when he strikes accord with Michael Rosen's acute declaration that "[t]he worst of what the Nazi state did to the Jews was not the humiliation...; it was to murder them." I think the worst thing was not the murder but the cruel and inhuman treatment that accompanied it. What weighs heavily on our moral sensibilities is that, in life, they were herded like animals or worse as mere things (obstacles) to be discarded, and in death, as human embodiments of a plague so to be casted into the oven.

Moreover, dignity resonates with the idea of respect-as-respectfulness. A profound erosion of the sense of respect-as-respectfulness usually opens the door for violent behaviour towards others such as murdering them. This connection is present at the level of moral psychology, but not, par force, in the normative sense.

³⁸ In the *Tugendlehre* passage, there is a smooth transition from *Groundwork* abstraction of 'humanity in the person' to every human being. I believe this transition dispels long held suspicions that Kant might have excluded a significant number of human beings, who may not qualify as fully rational persons, from moral protection of the highest order. For an argument critical of Kant's supposedly restricted view of the dignity of person, see Doris Schroeder "Human Rights and Human Dignity: An Appeal to Separate the Conjoined Twins" *Ethical Theory and Moral Practice*, 15: 3 (June 2012): 323-335

For every "human being regarded as a person, that is the subject of a morally practical reason...possesses a dignity...by which he exacts respect for himself from all other rational beings in the world... Humanity in his own person is the object of the respect which he can demand from every other human being, but which he must also not forfeit." (TL 6: 434-435) As rational beings, everyone has humanity; but it is a mistake to assume that, within Kant's moral theory, the humanity in the person is a metaphysical property garnered from another plain of existence colouring our ordinary humanness (akin to Plato's vision of the "intelligible world"). Instead, the *noumenal* self is simply the dimension of man "as an ideal, as he ought to be and can be, merely according to reason" (Vigil 27:593). Furthermore, respect is a prerogative of the status of humanity accorded "to even a vicious man as a human being; I cannot withdraw at least the respect that belongs to him in his equality as a human being, even though by his deeds he makes himself unworthy of it." (TL 6:462-463)

fall a little short, as they appear to reinforce the proliferation of the talk of dignity in recent moral discourses. In particular, Darwall conceives of respect for dignity neither with the gravitas nor with the sense of urgency distinctively attributed to it, despite his expressed intent to the contrary.

5.2 Dignity as Universalized Rank

At the outset of this chapter I stated that there are two major ways of conceiving dignity as moral status. One begins with the idea that dignity is some sort of value, qualified as inherent, incomparable or absolute. On this view, the dignity of something has come to mean its moral worth due to properties inherent to it. It has its origins in Kantian moral philosophy, which also has inspired the predominant paradigm in contemporary human rights theorizing; worth engenders a framework of conceptualizing about human dignity I described as "the contemporary paradigm". However, as our discussion in the previous section has indicated, Kant's own view betrays the basic tenets of the contemporary paradigm and is instead found to be more compatible with the idea of dignity as rank or honor.

On the second view, dignity is essentially attached to rank or elevation, a position conveniently termed "dignity as honor". Dignity as honor sourced two conceptual frameworks, the archaic and traditional paradigms. The archaic paradigm preserves the hierarchical nature of rank and honor within which dignity emerges as an evaluative concept signifying inward and outward expression of comportment and noble bearing. Obviously, in this sense, dignity retains the status accorded to royalty or nobility: one of the entries to dignity in the *Oxford English Dictionary* has it that dignity connotes "befitting elevation of aspect, manner or style;...stateliness, gravity."³⁹ We still routinely use dignity to describe how well some people comport themselves, and also to judge some people's unseemly public display of character.

Jeremy Waldron observes that "[s]uch an attachment of dignity with old concepts of noble rank and hierarchy may appear to beget [...] objections. One objection would be the difficulty of instilling

On the other hand, critics of Kant often speak of Hitler as an epitome of persons who may have lost or forfeited their dignity on account of their despicable deeds, effectively undermining the thesis that dignity is inalienable. Although this shows that dignity has an inward dimension that the individual ought to uphold and expressively live up to, it shouldn't be blurred into the modern normative aspect of the idea. Evidently, the pre-modern attitudes of honor and self-bearing are built into the idea of dignity which has benignly survived in present day idea of coolness. But, Kant's idea is that, whether the person carries herself with some modicum of self-control, she is entitled to a respect that belongs to her in her equality as a human being.

³⁹ Quoted in Waldron, 2012. p. 21

outdated indicator of social inequality into our modern egalitarian framework." ⁴⁰ For we consider it constitutive to our modern notion of human dignity that conditional differences of status have no place for defining our basic equality as human beings. Almost no one thinks that one has differential claim to dignity relative to his fortunes of birth, social standing or comportment abilities. That does not mean, retorts Waldron, that "appeals to rank always come in the way of egalitarian aspirations unless we eject elements of rank and elevation out of the concept of dignity."⁴¹ Against these currents of contemporary theorizing wherein human dignity is considered to be divorced from any connotations of rank and elevation, but regarded as an attribute of a human being as he is found in nature bereft of any hierarchical order of human convention, Waldron insists that dignity "has roots in the thick reality of historically existing schemes of rank and nobility."⁴²

But, two sceptical responses may be posed against Waldron's declaration that rank is an adequate interpretive framework for human dignity. On the one hand, one might ask: isn't appeal to rank precisely what the archaic conception defends? Waldron would say, not necessarily. This is because appeals to rank do not necessarily suggest inegalitarian conception of dignity; rank is not conceptually opposed to the idea of basic equality. In other words, conceived as a rank dignity can still maintain its egalitarian underpinnings, Waldron argues: "the notion of *human* dignity involves an upwards equalization of rank, so that we now try to accord to every human being something of the dignity, rank and expectation of respect that was formerly accorded to nobility."⁴³

Secondly, it may be argued that Waldron simply kept rank in name only while in substance the upward equalization means nothing more than an affirmation that Dignity's ancient connection with noble rank has been superseded. If we consider, for example, legal provisions on dignity in the human rights discourse, we get the notion that dignity is tied to a blanket denial that humans have inherent ranks. Dignity is equated rather with the abolition than with the institution or restitution of rank. Not only in morality but also, and more distinctively, in law, basic status differences have long been abandoned. So one may rhetorically ask- "why then retain the notion of rank?" In response to that Waldron contends,

⁴⁰ Jeremy Waldron "Dignity and Rank" *European Journal of Sociology*, 48: 2 (August 2007): 201-237

⁴¹ Waldron *Dignity, Rank and Rights*, 2

⁴² Jeremy Waldron "*Dignity and Rank*", 230

⁴³ *Dignity, Rank and Rights*, 33 Undoubtedly, there are some aristocratic privileges that cannot be universalized either because they signify unjust practices, as for example the Roman notion of *Dominium* in ownership which includes serfs and slaves, or because when extended some will change their fundamental character.

"this ranking sense of "dignity" offers something more to an egalitarian theory of rights than meets the eye."⁴⁴ Evidently, with respect to the significant number of norms that regulate our practical life, both in law as well as in morality, ranking status has indeed become obsolete; but "as far as dignity is concerned the connotation of ranking status remained, and that what happens was that it was transvalued rather than superseded."⁴⁵

In order to flesh out Waldron's reasoning for the idea of dignity as rank, a few remarks need making in regard to what is distinctive about the notion of ranking status that Waldron has in mind. The first is that, for Waldron status is principally a legal idea, albeit a dynamic one. He writes, "status is a legal condition characterized by distinctive rights, duties, liabilities, powers, and disabilities."⁴⁶ And secondly, status does not merely envelop rights and privileges, for it adds a further fact: it is not just an expository device packaging Hohfeldian incidents, status also embodies underlying legal reasons and public concerns for the determination of legal incidents, further vindicating why they do appear in a specific package.⁴⁷ The status of citizenship, bankruptcy, felony, lunacy, or minority confer "not just reasons or [public] concerns for legal provisions one at a time (which might then be expounded seriatim or together, according to expository convenience), but they are reasons and concerns for generating the whole package of rights, duties, capacities, and liabilities of the person concerned."⁴⁸ Status is not redundant since it signifies more than the sum of legal incidents that it encapsulates.

Dignity as Rank: from Law to Morality.

Analogous to its employment in law, "[t]he idea of single [or equal] moral status conveys" the familiar idea that "we all have the same basic moral rights and we labor under the same array of basic moral duties."⁴⁹ For the deployment of rank in morality, Waldron is adamant that it may be more adequate to

⁴⁴ Waldron *Dignity, Rank and Rights*, 31

⁴⁵ Waldron *Dignity, Rank and Rights*, 31

⁴⁶ Waldron, "Dignity, Rank and Rights" The 2009 Tanner Lectures at UC Berkeley *New York University Public Law and Legal Theory Working Papers*. Paper 151. p. 51

⁴⁷ Waldron "Does 'Equal Moral Status' Add Anything to Right Reason?" New York University, School of Law, *Public Law and Legal Theory Research Paper Series*; Working Paper No. 11-52 (Aug. 2011) , 7

⁴⁸ Waldron "Does 'Equal Moral Status' Add Anything to Right Reason?", 7

⁴⁹ Waldron "Does 'Equal Moral Status' Add Anything to Right Reason?", 2

begin our exploration of dignity as a legal idea "and then look to see how that works in a normative environment (like morality) that is structured quite differently from the way in which a legal system is structured."⁵⁰

Certainly in the realm of law (I suspect, less significantly in morality) we may identify two contrasting categories of status: condition and sortal statuses. Condition statuses define a person's relative standing measured against established norms, and several bases of distinction in status maybe identified ranging from recognizable powers and authorities as in the status of a creditor or legal majority, to disabilities as in bankruptcy, felony and lunacy. These legal statuses apply to individuals in virtue of the conditions they are in, either by choice or brute luck. Sortal status, on the other hand, designates what sort of person that one is. It is a baseline representing a person's permanent position in the eyes of the law. In a dignitarian society there is but one sortal status.⁵¹

The baseline sortal-status, Waldron maintains, "is high enough to be termed a 'dignity'"; it is the status of "the bearer of an array of rights—rather than the status of someone who mostly labors under duties; it is the status of someone who can demand to be heard and taken into account."⁵²

What is interesting to see is how dignity conceived as a ranking status serves egalitarian goals. If dignity is primarily a legal idea, how does then law protect, recognize, or promote human dignity? Waldron remarks that there is a duality between general rules establishing the status and particular rules that protect it. Protecting individuals against degrading and humiliating treatment is one fundamental way in which law protects dignity. Some rights constitute human dignity, while, at the same time, dignity serves as their underlying content packaging particular rules protecting persons from degrading and humiliating treatments.

Although human dignity is protected and at the same time constituted by rights, that is not all there is to tell about it; a good account of human dignity should also explain it as noble bearing- which refers to those intuitions Waldron calls 'moral orthopedics— "having a certain sort of presence; uprightness

⁵⁰ Waldron "Does 'Equal Moral Status' Add Anything to Right Reason?", 2

⁵¹ Waldron reckons that not so long ago many have believed there were different sorts of human beings- free and slave, noble and plebeian, men and women, Caucasian and other- and (erroneously) thought that we were justified in legislating rules and dignities befitting these presumably basic sortal differences. It is no longer the case; there has been "a sea-change in the way dignity is [now] used", although some relics of the past still remain diffused across cultures. Basically there's just one sortal-status in the eyes of the law, and it is more like the status of a free noble man than of a serf.

⁵² Waldron *Dignity, Rank and Rights*, 59-60

[...]; self-possession and self-control; self-presentation as someone to be reckoned with; not being abject, pitiable, distressed or overly submissive in circumstances of adversity.”⁵³ What is expressed here is a responsibility to maintain, treasure and protect one's own dignity. It may appear that dignity as noble bearing emerges as an icing on the cake, adding flavour but little substance to dignity's normative core. However, without having to inflate its significance, dignity as noble bearing can be said to play a meaningful normative function. Waldron states that “this element of noble bearing is *normatively important... for the way one is treated by others*; one must not be treated by others in ways that make a degraded bearing or a degraded self-presentation unavoidable.”⁵⁴ Perhaps that is partly the reason why slavery, torture, and related forms of degrading and humiliating treatments are considered as paradigmatic violations of human dignity. There is one feature that the above sort of wrongful actions share in common, namely that they are inherently designed to break down the victims' own sense of self-respect, by depriving him of self-possession and self-control. Similarly, but on the flip side of the above argument, there is a passage from Kant's *Metaphysics of Morals* that appears to champion the notion that dignity as noble bearing defines "duties to oneself". In the famous passage *On Servility* Kant claims that honouring the humanity in one's own person implies a duty not to diminish, forfeit or fail to vigorously defend it, including a positive requirement that one ought to display a dignified bearing and self-presentation.

That being said, what distinguishes Waldron's theory from that of Kant and Darwall is that it privileges law over morality as the primary habitat of dignity.⁵⁵ He claims that law is a normative system in its own right, and there is such a thing as legal philosophy, a body of thought within which legal concepts including dignity maybe analyzed and vindicated. It is not plausible to try to ground dignity as a legal concept on principles available only to critical morality, so he claims. This view, nonetheless, does not amount to a blanket denial of the possibility of a moral critique of the concept of human dignity. It merely asserts that, unlike law, morality is not an institutionalized order as "it may be harder to think of

⁵³ *Dignity, Rank and Rights*, p. 22

⁵⁴ *Ibid*, p. 142 emphasis mine.

⁵⁵ Lately, Waldron seems to be unsure of the initial bold positions he vigorously defended. In one of his latest writings, he sought to accommodate both perspectives when he defines dignity rather clumsily as a status-concept located at the crossroad between morality and law: “it has to do with the *standing* (perhaps the formal legal standing or perhaps, more informally, the moral presence) that a person has in a society and in her dealings with others.” Waldron, Jeremy “How Law protects Dignity” *Public Law & Legal Theory Research Paper Series: (December 2011) Working Paper No. 11-83*, at p. ?

(critical) morality as *proceduralized* in the way that legal systems obviously are",⁵⁶ even though moral philosophers sometimes employ institutional metaphors to convey their thoughts and reasons.

Nevertheless, it seems to me that an argument for separating the legal analysis of dignity from dignity-theorizing in critical morality does not, at the same time, serve as a reason for privileging law over morality. Despite my reservations about its overall plausibility, I still believe that Waldron's conceptual framework brings forth more illumination to our understanding of human dignity in morality than meets the eye.

In my view, as far as human dignity is concerned, moral reasoning has precedence over legal analysis. According to Waldron, however, morality may enter the discourse in two peculiar ways. One way that moral analysis may figure in the discourse on human dignity is to "evaluate law morally using (something like) law's very own dignitarian resources."⁵⁷ This function is linked to a less compelling use that moral analysis maybe put to task, that is, moral theorists "can certainly talk of [sea] changes in our *understanding* of moral requirements", and using Waldron's framework make better sense of the declaration that human dignity involves an upward universalization of rank. One can grant Waldron the thesis that how we come to understand moral requirements that the idea of dignity brings to bear may mimic the evolution of status in the legal context.⁵⁸ The point he is making is not only that "our moral

⁵⁶ Ibid, p. 67 emphasis original. Certainly there are procedural moral theories; the works of T.M. Scanlon and Jürgen Habermas, for example, epitomize procedural moral theories.

⁵⁷ Ibid, p. 67

⁵⁸ In the past, even some respected moral theorists used to defend the notion that there were different kinds of human beings, each with a moral status befitting its racial or cultural pedigree; but now we think that such an idea is morally deplorable. David Hume's ill-conceived conception of race may not pass the test of time simply as an insignificant historical anecdote. That would be a gross understatement, given his philosophical pedigree. Even Kant had managed to let slip a remark unbecoming of someone considered by many to be one of the great philosophers of modernity. Kant had reportedly dismissed an apparently intelligent remark said by a black man on the ground that: "This fellow was quite black from head to toe, a clear proof that what he said was stupid." The notion that there is an inherent rank between different races was the view nonchalantly advanced by Kant and Hume, which probably has set the tone for *Hegel's Philosophy of History*. Thoughts about race by Hume and Kant epitomizes what scholars have now recognized as "the curious paradox of Enlightenment thought", that the supposed universal appeal of the dictum- "all men are born free and equal"- only operated within a very restricted universe wherein equality applies to people who were in advance presumed to be equal. A similar but far more sinister view was recently duplicated in a two-volume treatise in moral philosophy by Hastings Rashdall: *A Theory of Good and Evil: A Treatise on Moral Philosophy*, 2nd Edition (Oxford: Oxford University Press, 1924) Cf. Waldron *Dignity, Rank and Rights* pp. 68-69

The reason why I have chosen to go with Hume and Kant is not to undermine their philosophical excellence, especially the latter's brilliant treatises in moral philosophy, but to underscore that those astonishing claims about inherent moral distinctions between human beings were not as remotely uncommon among philosophers as one may have initially thought.

views have moved *upward* in this respect” but also, and more importantly, that we pretty much left the higher status as it is, as a moral threshold. People of high status keep their privileges relating to their autonomy, as attacks on their personal dignity is still regarded as a sacrilege but now such protections are extended to everyone. Nonetheless, it is my contention that the metaphor of upward universalization is pertinent only for exegetic purposes- illustrative but not definitional, and therefore has little to do with the moral justification of dignity as rank.

Even though Waldron's account were accepted as historically plausible, it lacks a (moral) normative basis. It is precisely on this score that I take issue with Waldron. Critical morality is ahistorical; there can be no upward progression of morality understood as a set of values, reasons and requirements; normative grounding of moral concepts is enduring, therefore immune from modification due to or in line with “the spirit of the time”. Waldron himself concedes that there is little connection between the historical progression of moral ideas and the grounding of their corresponding normative principles. Such acknowledgement of a gap is central to my critique of Waldron, and the fact that he overlooked its importance adds further fuel to my disagreement with him.

The evolution of legal principles may, on the other hand, be an adequate source of normativity in law; I have no quarrel with him on that score. I acknowledge that to a certain extent legal reasoning is autonomous and every legal conception need not necessarily be justified by, and thereby rendered subservient to, an overarching moral theory. Waldron is correct in highlighting that "we should not assume that a legal analysis of dignity is just a list of texts and precedents, in national and international law, in which the word 'dignity' appears."⁵⁹ In general, I believe he is right in insisting that "there is such a thing as legal philosophy, there is such a thing as legal principles, and it is a jurisprudence of dignity" that he is pursuing; but, I think, none of that gainsays the presumption "to treat dignity as a moral conception in the first instance or assume that a philosophical explication of dignity must begin as moral philosophy."⁶⁰

It is not particularly problematic to say that, in the order of our understanding, the analysis of dignity may begin with law and then proceed to morality. But it will still be wrong to assume that our moral

Instead, it had been a mainstream thought until as recently as mid 20th century when the notion of moral equality took the centre stage in philosophical theorizing, wherein relics of the past still pop up at times camouflaged by the liberal self-righteous and self-congratulatory notion of tolerance extended to 'the other' "out of charity" than as a matter of justice.

⁵⁹ Waldron *Dignity, Rank and Rights*, p. 15

⁶⁰ Ibid,

understanding of dignity is in any way dependent on the legal understanding. I think it is more reasonable to say, using Kant's metaphor (with respect to knowledge and experience), that 'our understanding of dignity as a moral idea may begin with its legal analysis but it by no means follow that the moral idea arises out of the legal analysis of dignity'.

As a legal conception, the idea of dignity presupposes institutions that are tasked with juridical interpretation and enforcement of the principle of dignity. Absent these presumptions, it would lose what makes it distinctively a legal idea. This fact that law is institutional influences the normative vindication of principles that a legal conception advances. On the contrary, the moral idea makes no such presumption; if anything, it utilizes institutional metaphors such as the notion of the moral community or procedural metaphors like Rawls' "original position". Therefore, to start the analysis of dignity as a legal idea and then try to normatively vindicate the concept of dignity in morality using its juridical structure would be a flawed approach. In all fairness, that is not probably what Waldron was suggesting; but also in failing to suggest that, Waldron's advice for moral philosophers to mimic the legal structure in their moral analysis of dignity rings hollow. For the evolution of our moral thinking has no bearing whatsoever on the validity of moral principles, it is, therefore, beside the point in which order of understanding dignity figures in practical reason.

That being said, I am profoundly skeptical about the veracity of Waldron's major premise, which states that a sound legal analysis of human dignity can be defended independently of any moral foundation. He did not provide a convincing argument for a purely legal analysis of human dignity; his lengthy historical analysis that purportedly shows an upward evolution of dignity as rank and companion declarations about the normative independence of law, merely scratch the surface without conferring much needed substance to his claim.

In addition, I think, one can vindicate a positive argument for an underlying moral foundation to a legal conception of dignity: as far as human dignity is concerned, I think there are valid reasons to suppose that its legal analysis ultimately requires a moral foundation. Take for instance, Waldron's conception of upward equalization of noble privileges, which must include a substantive criterion by which we can identify privileges that ought and those that ought not be universalized. He argues that positional privileges are not valid candidates for universalization; some, such as the privilege that accords the nobility a prerogative to speak first in public discourse, are logically impossible to universalize, whereas others ought to be modified to fit into the new egalitarian setting, for instance the right to have equal vote in every important decision on public policy is transformed into the notion of

representative democracy. But, since we may not cherry pick some privileges and christen them to everyone as valid entitlements, when it comes to injecting a principled scheme of delineating universalizable from non-universalizable noble privileges, we ought to rely on an underlying substantive conception of equality. Contrary to what Waldron would have us believe, I think ideas of legal equality (or simply legal personhood) do *not* suffice to accomplish that, not at least without the patronage of some conception of moral equality.

I do, however, think that Waldron's legal analysis of dignity shades some light on the dual structure of human dignity: dignity engenders norms that establish it as a general normative status, and, at the same time, establishes specific norms that protect us from degrading and humiliating treatments that are aptly regarded as paradigmatic violations of human dignity. I commend Waldron for bringing into light the dual structure of dignity as a general status for possessing rights and some specific rights, in turn, designed to protect our dignity from direct moral violence. Nevertheless, I do not think his is the correct view. In particular, I think he is mistaken in claiming that the historical evolution of rank underlies deep equality. Human dignity, on the other hand, reflects deep equality that accords human beings basic equal respect and difference even in the state of nature. Historical analysis of rank, to say the least, is not the most fitting framework for capturing ideas of equal respect and difference owed to human beings long before the emergence of the basic structures of society—to say nothing of modern society.

5.3 Concluding Remarks

At the outset of this chapter I devised a contrast between the status view and the conception of dignity as value, and conjectured that dignity construed as value does not inform what is distinctively important about the concept of human dignity. I must reiterate that the value concept I alluded to, in contrast with status, is very distinct from the Kantian notion of 'value beyond price'. Value in the ordinary sense connotes a good or telos to be pursued or a metaphysical property to be treasured. Conceived as such, value theory is indeed the polar opposite of the status conceptions of human dignity. There are cogent reasons for resisting conceptualizing dignity as value in the sense described. The upshot is that, dignity is not a sort of value that underlies/justifies the possession of basic moral

rights. My point is that the logic by which normativity is accrued from the idea of dignity is quite unlike the ways in which normative constraints may flow from statements of value.⁶¹

Furthermore, I argued that it is more plausible to read Kant's conception of dignity as an instance of the status view.⁶² In making sense of Kant's equation of "dignity" with incomparable worth, we should take seriously Elizabeth Anderson's distinction between appealing and commanding values "which if it works", and I think it does, "may bridge the gap between dignity as value-beyond-price and dignity as rank or authority."⁶³ For Kant, the dignity of persons connotes a normative standing that commands respect, and also designates a complementary notion of noble bearing and moral presence. Despite his initial ambivalence about whether it would be adequate to consider Kant's view as a status conception, with the aid of Anderson's clarification, Waldron appears convinced that "[i]n this sense, dignity ceases to be a purely value-concept and takes on the character much more of a concept of normative status or considerability."⁶⁴

In defense of the status conception, I maintained that the status theory best illustrates how the dignitarian content added to certain violations of rights can render the action more objectionable than it would otherwise be without the dignitarian element, i.e., the latter adds stringency to rights. What I mean by the dignitarian content is something akin to what may be conveyed by the idea of respect-as-respectfulness. Take murder, for example, which is an unjustified violation of the basic right to life. There can be a morally relevant distinction between murder *simpliciter* and murder by way of cruel, barbaric and inhumane methods and it is easy to see that the latter contains more dignitarian content. Whereas the barbaric and inhumane element constitutes violation of dignity as a right, the murder, i.e., the unjustified act of taking someone's life, violates the victim's dignity via the violation of the right to

⁶¹ I do not, however, intend to suggest that in general value have no distinctive moral claim on us; on the contrary, ordinary values such as friendship warrant a distinctive claim over how we ought to treat our friends. Joseph Raz has an interesting dualistic account of how valuable things govern our behavior. We respond to value either by engaging with the value or by respecting the value. We engage with the value of books, for example, by reading them; we respect the value of books by not burning libraries or by not restricting access to certain books. See Raz, *Engaging Reason: On the Theory of Value and Action* (Oxford: Oxford University Press, 2000); *Value, Respect and Attachment* (Cambridge: Cambridge University Press, 2001) If anything, dignity is a sort of value that elicits or commands respect.

⁶² For a comprehensive defense of Kant as a status theorist, see Oliver Sensen 2012

⁶³ Waldron, *Dignity, Rank and Rights*, p. 27

⁶⁴ *Dignity, Rank and Rights*, p. 138

life, which essentially constitutes a dignitarian content.⁶⁵ Murder obliterates the very moral status for having any rights whatsoever; by eliminating the victim's future existence, it permanently forecloses the possibility of leading a dignified life. In addition, murder epitomizes treating a person as if she counts for nothing, and therefore violates the dignity of persons.

Both senses of dignity violation are packaged into one specific act of heinous murder; and it is reasonable to say that the additional dimension that dignity brings forth in terms of respectfulness adds moral stringency to certain ways of treating people. Offenses to human dignity need not necessarily be attached to violations of basic moral rights. It does also figure in right violations that are not severe moral violations as murder, and still produces a comparable effect on the overall moral stringency of the moral prohibition against it. For the dignitarian content has little to do with the content of the right that is being violated, but the manners in which it is violated, i.e., the fact that the right violation occurs in a degrading and humiliating mode, thus there is no justified reason for relating human dignity distinctively to basic human rights.⁶⁶ To be clear, the conception of dignity as moral status does not subscribe to the notion that human dignity is necessarily and peculiarly tied to a subset of human rights we call basic human rights. That does not, however, falsify the claim that some basic rights are specifically designed to protect us from direct assaults to our dignity. In particular, rights against degrading and humiliating treatments are pertinent to the protection of our basic status as human beings. Also the disclaimer that there is no principled relation between the most basic human rights and human dignity does not gainsay the observation that most incidents of dignity violation occur in conjunction with a violation of basic human right. Furthermore, some basic right violations partly involve degrading and humiliating treatments; torture, for example, fits this bill. And yet, the violation

⁶⁵ I acknowledge that it is contentious whether simple murder constitutes a violation of dignity. My view is that, it obliterates the moral status of an individual whose life ought matter. To the very least, murder involves treating a person as a mere means, to be discarded as if the person lacks a normative authority over matters essential to life including his continued existence.

⁶⁶ Recall that in the first chapter of this dissertation I said that the most potent challenge to dignity theorizing declares that human dignity is an umbrella term encompassing basic moral rights. According to Birnbacher, the primary proponent of this view, human dignity has no content of itself and its most adequate function is to abbreviate the most basic human rights. Since human dignity does not occasion the delineation of some rights as basic, it is therefore substantively reducible to the most basic rights that it abbreviates—for expository purposes. However, by adopting what I consider to be the most plausible conception of dignity (as moral status), we can effectively counter the charge of substantive redundancy. Human dignity has no special relationship with basic human rights, hence its content does not intersect with the content of basic human rights. Nevertheless, it might be related to the most basic human rights in a different sense.

of dignity that torture engenders is not the only principal reason why torture constitutes a basic right violation.

Finally, the idea of standing or normative authority distinctively resonates with the two salient features of the conception of dignity as moral status. Such resonance illustrates why the status theory vindicates a valid relationship between dignity and moral rights: we think of dignity as a general status and some rights as instances to that status whose content is, in turn, defined by dignity. The fact that dignity is, quite plausibly, conceived as the content of a right encompassing prohibitions against degrading and humiliating treatments maybe one of the reasons why we must not think of dignity as the justificatory ground for rights. For it would still beg the question what grounds the right the content of which is dignity itself. After all, status is not reducible to a simple array of legal/moral incidents. For that reason, it may have multiple roles to play in the morality of rights than the too simplistic vision of dignity as a foundation.

Chapter 6

Conclusion

In this dissertation I defended the view that human dignity is the moral status or standing for having rights. The most important features of the status conception are the following: Firstly, the status conception of dignity envisages a dualistic relationship between human dignity and moral rights: as a general normative status dignity is presupposed by the possession of rights, and as a normative principle it is constituted by certain specific rights—rights that have to do with the protection of people from degrading and humiliating treatments. Secondly, the conception of dignity as moral status best accounts for paradigmatic violations of human dignity that are most familiarly described under the banner of 'cruel and inhuman treatments' including torture, humiliation and other similar ways of treating people as if they morally count for nothing. And thirdly, the conception of dignity as moral status adequately explains why our rights against 'cruel and inhuman treatments' have categorical moral force.

I argued that dignity as moral status not only debunks the most telling skepticism against a positive appraisal of the concept in the discourse on moral rights, but also reflects the most profound and compelling thoughts about human dignity as a moral concept. The following concluding remarks will endeavor to show how the status conception responds or relates to other competing conceptions of human dignity. In regard to that, I will briefly discuss how the status theory responds to general and anticipated objections and further highlight what is so distinctive about the status conception that appears to clarify the concept of dignity with characteristic rigor in ways other conceptions do not.

The Status Theory and Dignity Skepticism

In Chapter 1, I recognized 'substantive redundancy' as one of the most forceful objections to any positive account of human dignity, not just specifically to the status conception. In a nutshell, the redundancy argument maintains that the core substantive meaning of human dignity can aptly be conveyed by, and is hence reducible to, a set of fundamental human rights. The principle of *Menschenwürde* (or human dignity) "has no specific content of its own" and "all the goods and rights protected by [it]...are also protected by other moral principles. In this...sense, then, the principle has no

specific content of its own."¹ We can therefore dispense with dignity when thinking about the basic structure and normative foundations of moral rights, according to some proponents of the redundancy-objection; that is because, they claim, human dignity is not "a principle postulating a good of its own."² Despite being substantively reducible to minimal individual rights "which themselves are postulated by other principles", what is distinctive to human dignity "is the priority it gives to certain minimal individual rights and claims" which it shields from potential trade-offs with other rights and claims, and consequently declare as inviolable.³

As I stated elsewhere in this dissertation, by adopting what I consider to be the most plausible conception of human dignity (as moral status), we can effectively counter the charge of substantive redundancy. Note that the redundancy thesis does not exactly claim that dignity is without content, but only that the concept of dignity designates a set of basic individual rights the content of which are defined by other moral principles. Therefore, to answer the redundancy objection, we must establish two points: (i) that the idea of human dignity has a content of its own, and (ii) that dignity is not a principle that prioritizes minimal individual rights, but a normative principle constituted by some basic rights the content of which is defined by none other than respect for the dignity of persons.

There are two components to this second point: on the one hand, the conception of dignity as moral status disputes a general relation between human dignity and basic moral rights, and on the other hand, it insists that human dignity is germane to the understanding of some basic right-claims than to others, even then, dignity's relationship with specific rights is not as a prioritizing principle.

First and foremost, the status conception contends that a substantive theory of human dignity can be formulated and defended by delineating the types of treatment of people that directly display respect for the general moral status of the human person: any treatment of persons that distinctively reflect one's regard, honor, respect and veneration to the fact of their being human fits this bill. Or one can state it negatively by establishing paradigmatic violations of dignity, and then contrariwise extract and structure the essence of dignity's specific content as a distinct and indispensable content of human

¹ Dieter Birnbacher "Ambiguities in the Concept of Menschenwürde" in K. Bayertz (ed.), *Sanctity of Life and Human Dignity* (Dordrecht: Kluwer Academic Publishers, 1996), 107-121, at. 112

² Birnbacher "Ambiguities in the Concept of Menschenwürde", 112

³ Birnbacher "Ambiguities in the Concept of Menschenwürde", 112-3

dignity. The requirement to treat persons with regard and difference resonates with conferring equal but high moral status to persons; but on the flip side, certain actions essentially involve a direct violation of the dignity of persons. Treatments such as degradation and humiliation constitute the denial of the equal moral standing that each person is granted by the principle of human dignity, for they manifest a mode of relation which in its essence is based on an attitude of disrespect for the other. To humiliate or degrade the humanity in a person is to deny him the moral standing that he is in some fundamental sense the moral equal of anyone (and everyone). In this regard, I wish to point to the closing section of Chapter 1, in which I mentioned some examples ranging from the treatment of POWs to discriminatory institutional policies and social norms that, in my view, illustrate the essence of humiliation and degradation. I shall not restate them here, but only say that the examples showcased instances of direct outrages to human dignity. The apt of the story is that to disgrace, debase, ignoble, degrade or dishonor a person is to think of him as having a lesser claim for respect than should normally be accorded to persons by virtue of their humanity. And defined positively, dignity signifies gravity and the standing to address others as someone to be reckoned with, as someone who has basic claims, and as someone to be recognized and treated in ways that underscore that he is in some fundamental sense the equal of everyone.

The moral standing that I consider high enough to be called dignity calls for the treatment of persons through the authority of the highest normative tools available to morality, i.e., through the possession of individual rights: To be endowed with human dignity then is to have the moral standing for the possession of rights. As a following step, the relationship between the most basic individual right-claims and human dignity as a status concept must be laid down with clarity.

As a moral standing for having rights, human dignity envisions no special relationship with basic moral rights since its content does not necessarily intersect with the content of the latter. Considering dignity as a principle of ranking is not in consonance with the status theory either. What then is the precise relation between the principle of human dignity and basic rights? Indeed, basic right-claims against degrading and humiliating treatments can most concretely encapsulate the substantive core of human dignity. These rights are basic to the human person for the reason that they protect us from severe moral offenses to our person, but they are also paradigmatic instances of the principle of human dignity because they are meant to directly protect the moral standing of individuals. Other basic rights such as the right not to be tortured consist in the protection of our dignity; this is because torturing a person

designates one's manifest lack of regard for the moral standing of a fellow human being. Obviously torture violates dignity in some measure. But it is also morally objectionable for compelling reasons other than due to the fact that it signifies a manifest denial of the moral standing of victims or for the fact that victims of torture are treated as if they count for nothing.

But it is not always the case that a basic right violation conveys a dignitarian content. Take for instance an occasional violation of a basic right to liberty perpetrated on a fully competent grown-up man by his own obsessively paternalistic father. This simple breach to one's liberty is indeed a right violation, regardless of the that the father presumably wants nothing but a flourishing life for his son; it is not a violation of dignity nonetheless.

I do not deny, however, that a violation of the basic right to liberty can simultaneously manifest a violation of human dignity. We may expand on the above example by introducing additional facts to it: say the father couldn't help himself from invading and dictating every aspect of his son's life, reducing the latter to a mere vehicle for his own vision of the good life. In these circumstances, the father has usurped his son's standing to decide what purpose is to be made of his body and mind. The son can't freely decide or do anything without securing his father's prior approval, in which case the hapless son is clearly not the author of his own life and hence treated by his father as if he lacks a normative authority or standing over essential aspects of his life, that is to live his life in his own terms. Therefore, in accordance with the status conception that I champion, this severe case of violation to a person's basic liberty rights entails the violation of his dignity. Clearly his dignity is at stake in this, though not in the former, case. Peter Schaber puts the point with characteristic rigor: he writes, "[t]he dignity of a person relates to the claim to be acknowledged as a being that is allowed to live his or her life according to his or her own ideas - in other words, to live a life with self-respect."⁴

This is therefore to say that, according to the status conception, a violation of human dignity does not eventuate simply because a violation of basic rights has taken place (unless those putative rights are composed entirely of specific rights against degrading and humiliating treatments). Nor will it be plausible to say that there can be a violation of dignity in the absence of a right violation.

⁴ Peter Schaber, "Human Dignity, Self-Respect, and Dependency" in Paulus Kaufmann et. al. (eds.) *Humiliation, Degradation and Dehumanization: Human Dignity Violated* (Dordrecht: Springer, 2011): 151-158, at 153

That being said, I wish to put more emphasis on the idea that there is a duality in dignity's relationship with rights: dignity is the moral status for having rights, having any moral rights whatsoever, and dignity is also constituted by some rights. Does that then mean rights are derived from the inherent dignity of the human person? Does the status theory warrant the idea that dignity is foundational to moral rights?

Status Conception of Dignity and the Foundation of Moral rights

The above questions were considered in Chapter 2, where, by drawing on Jeremy Waldron's work, I identified four senses in which the notion of foundation could be understood: foundation as a matter of genealogy and history, as a source of legitimacy, as a valid source of reason (justification), and foundation understood in the sense of shedding light on another concept. I mentioned that foundation in the first sense has little or no bearing on the normativity of moral concepts. Whether the concept of dignity is prior to the idea of moral rights in the historical order, or for that matter in the genealogical sequence, of ideas is an issue that has no relevance to the question what underscores the normative grip right-claims have on us.

One may, however, understand dignity as a foundation for rights in the third sense, i.e. as a genuine source of validity for right-claims—one that Waldron considers as "the most robust form of right foundationalism." This sense of foundation is what most philosophers and legal scholars have in mind when declaring that rights derive from the inherent dignity of the human person. It has been argued that basic moral right-claims are derived analytically from propositions that reflect the dignity of the human person: propositions about the inherent dignity of the human person logically imply propositions about moral rights; so that one cannot assert dignity as a normative concept but deny the latter, at the pain of contradiction. Two famous philosophers make that claim—James Griffin and Alan Gewirth.⁵ Both basically "adopt normative agency as the [Gewirth would say, dialectically necessary] interpretation of

⁵ James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008); Alan Gewirth, "Dignity as the Basis of Rights" in Michael J. Meyer and William A. Parent (eds.) *The Constitution of Rights: Human Dignity and American Values* (Ithaca and London: Cornell University Press, 1992): 10-28

the 'dignity of the human person' when that phrase is used of [*sic*] the ground of human rights",⁶ but each went on slightly different argumentative routes to warrant that claim.

The conception of dignity as moral status rejects that view, for a number of reasons. The first has to do with status conception's resistance towards linear derivation of moral (human) rights from one foundational principle. The pursuit of linear derivation of rights has two objectionable consequences: on the one hand, it overlooks the complex dualistic relation between dignity and rights—dignity as a general moral status for the possession of rights, and dignity as a normative principle constituted by certain rights; and on the other hand, linear derivation lends itself to the belief that all right violations are simultaneously violations of dignity, a normative consequence that status conception declare as untenable. Not to mention that dignity would lose its unique persuasion in morality if every right violation was to be considered as a violation of dignity at the same time, logical derivation cannot explain the normative locus of rights and why we need to take seriously the moral grip that right-claims have on us. The point is, in order to provide a compelling account of the foundations of rights more is needed than simply demonstrating the logical necessity of accepting a universal ascription of human dignity, which in turn serves to justify generic human rights. That is because a requirement not to contradict oneself, which lies at the heart of analytic foundationalism, does not substitute a normative moral reason for action.

Throughout this dissertation I highlighted that one of the most defining features of the status conception is that it espouses two ways of relating human dignity with moral rights: it conceives of dignity as a general status for having rights as well as the content of certain rights that are related to it in some specific ways—that is to say dignity is constituted by some rights, rights that have to do with the prohibition of degrading and humiliating treatments. A foundation of the kind discussed in the above suggests that we take dignity as a basis for generating specific (human) rights claims, and admittedly may confer "an account of human rights on a more rigorous basis than the list of rights given in a legal charter."⁷ But, this foundationalism does not comport with the fundamental feature of dignity's relation to rights that I have discussed earlier, as it would specifically fail to account for dignity's deeper relation to some basic rights than to others.

⁶ Griffin, *On Human Rights*, 152

⁷ Waldron, "Is Dignity the Foundation of Human Rights?," in Rowan Cruft et. al (eds.) *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015): 117- 137, 128.

Dignity has also been considered as a foundation in the looser sense "as a way of understanding the point of rights that will help us interpret particular right provisions as well as help us determine the spirit in which we should proceed in advancing rights-based claims."⁸The sort of understanding of a foundation considered here does not suggest a rigid linear approach for deriving and vindicating rights claims from the statement of a foundation. But the insight and understanding such a foundation might confer us "depends on how robust the conception of dignity was taken to be".⁹On a more robust approach dignity might designate an underlying moral status in virtue of which we exact respect and difference from all others. If by shedding light Waldron meant that dignity is a normative presupposition for the possession of rights, then I will have to concede that human dignity may in that sense be understood as foundational to moral rights.

A Response to Conceptualizing Human Dignity outside the Realm of Rights

Some philosophers deny that the sheer fact that most dignity violations occur simultaneously with a rights violation can provide a reason to suppose that human dignity is an indispensable element of the morality of rights, or vice versa. Respect for rights or the most basic claims of the human person will certainly foster human dignity: a society that routinely respects the rights of persons, for example, seem to correlatively accord basic respect and dignity to its members. Certainly, there is some dignity in being the right holder and in having one's basic rights and claims respected. But not, as Avishai Margalit puts the charge, because violation of some rights can be a paradigmatic instance of dignity violation. There may be a correlation between the two, but that does not suggest causation or derivation of one from the other. Respect for rights engages the self-respect of persons in quite distinctive ways to how respecting the dignity of persons engages self-respect. So in the same way, "the violation of rights involves a diminution of self-respect", while the violation of dignity involves "humiliating gestures that are not naturally related to rights."¹⁰

⁸ Waldron, *"Is Dignity the Foundation of Human Rights?,"* 131. Also see Ronald Dworkin, *Taking Rights Seriously* (Oxford, M.A.: Harvard University Press, 1977), 198.

⁹ Waldron, *"Is Dignity the Foundation of Human Rights?,"* 131

¹⁰ Avishai Margalit, *The Decent Society*. Trans. by Naomi Goldblum (Cambridge, M.A.: Harvard University Press, 1996), 52

The distinction that I described in Chapter 3 between the violation of rights and the manners in which rights are violated is pertinent here. There I also have recognized that humiliating gestures might sometimes be embedded in, though not constitutive to, rights violations, in which case I agree with the basic premise that the violation of dignity is analytically separable from right violations per se. It is important, however, to distinguish two normative consequences of the above distinction. The first – and I believe valid – implication is that some right violations are not occasioned by dignity violations. But the second consequence, that Margalit wants to prove, has it that dignity violations can occur independently of a parallel or antecedent violation of a right. I challenge this second ramification of the separation thesis.

It is one thing to say that humiliating gestures signify the manner in which a right is violated but not the bare fact of the violation of the right, and quite another to say that humiliating gestures are naturally unrelated to rights. But there is no argument for precluding gestures from being included in the content of a right; on the contrary, right-claims against degrading and humiliating treatments encapsulate prescriptions against certain attitudes and gestures. It is this mandatory relation between attitude and respect that provides us the principal reason why certain ways of treating people are considered degrading or humiliating. For that reason, the status conception rejects as unwarranted the assertion that humiliating gestures are unrelated to rights.

I do not, however, mean to suggest that gestures and mannerisms are the only mediums for violating the dignity of persons. Of course, there are right violations that inherently violate dignity without necessarily including gestures and outward expressions of contempt. Human dignity is paradigmatically violated, for example, in the case of torture – not due to the pain inflicted on the victims, or the particular details of how the act was carried out, but "because it is used to make it clear to the victims that they do not count, that they are fully dominated."¹¹

In chapter 4 and 5, I laid down the basic argumentative framework of the status conception of human dignity, by first clarifying the concept of moral status, then in Chapter 5 by submitting my case in defense of a particular strand of the status theory in contrast to other versions of it. In clarifying the concept of moral status, I identified four senses of what having a moral status might mean: to say that X has moral status means (i) how moral agents treat X is morally important, (ii) X is a direct object of

¹¹ Peter Schaber, *"Human Dignity, Self-Respect, and Dependency"*, 153

moral obligation or that it counts morally in itself, (iii) in its own right and for its own sake X gives us a reason to constrain our actions and behaviour towards it, i.e. X has interests, and (iv) X is owed duties. I argued that the sense of moral status that is consistent with basic intuitions about human dignity is (iv). We think that to be endowed with human dignity means to have a normative presence that morally compels others to grant respect and difference to those who are possessed of it—human beings. It, therefore, implies that human dignity is also a normative principle that imposes categorical duties. The other three senses of moral status do not, however, imply categorical duties.

In chapter 5 I also sought to explicate human dignity within the framework of degrees of moral status wherein having dignity implies occupying a higher moral status without, at the same time, denying other things from having some sort of morally recognizable status. It is, therefore, consistent with the conception of human dignity as moral status to maintain that other sentient beings have moral status, in one of the other three senses, and that we are morally prohibited to do certain things to them. Nevertheless, the claims emanating from the other senses to moral status have weaker moral force when pitted against dignity claims. The dignity of persons, on the other hand, implies the status of someone who is inviolable.

Consistent with the general notion that human dignity is a moral status in the fourth sense, we can find two competing substantive conceptions in the discourse about human dignity. There are conceptions that regard status as a sort of value or worth, and there are those that conceive of the moral status dignity confers to us in terms of high rank and honor. Many philosophers gravitate towards the conception of dignity as an inherently valuable status. I have one problem with this interpretation because worth or value, unless conceived in a strictly technical Kantian sense, does not seem to comport with the logic of rights. For rights appear to function normatively as constraints on the pursuit and promotion of values. I also recognized in Chapter 5 a proper clarification is needed to demonstrate that, for Kant, dignity is not purely a value-concept but instead takes the form and substance of high-ranking normative standing. I will not here discuss in detail the arguments for this particular interpretation of Kantian dignity. Kant writes that "[a] human being regarded as a person...possesses a dignity...by which he exacts respect from all other rational beings in the world." (TL 434-5) He asserts that respect must be accorded "to even a vicious man as a human being; I cannot withdraw at least the respect that belongs to him in his equality as a human being, even though by his deeds he makes himself unworthy of it." (TL 6:462-463) Kant insists that respect for the dignity of persons requires

moral protection from three cardinal vices that are paradigmatic forms of disrespect to the humanity in the person: arrogance, defamation and ridicule. Thought of in this way, respect for the dignity of persons "includes the respect we must show people just out of recognition of their status as people."¹² Stephen Darwall echoes this sentiment when he states that the respect that dignity commands is 'recognition respect': according "equal status in the moral community, understood as a community of mutually accountable free and rational agents."¹³ For both Kant and Darwall, the normative authority to demand respect not only implies that one is owed duties but it also requires that one must be a free and rational person who can be held to morally account. In that sense, the dignity or authority of persons is second-personal. Although the notion of standing or normative authority distinctively resonates with the conception of dignity as moral status, it seems to me that this particular conception does not capture the essence of being endowed with human dignity. To be clear, for Kant and Darwall, to have the normative authority and to be a moral agent are mutually interdependent. However, the most salient feature of human dignity is that all human beings are endowed with it regardless of their moral capacity, of which moral agency clearly requires. I do, however, think that dignity confers us an equal normative standing to possess rights, but it does not particularly require that one is a moral agent.

On the argumentative structure of the status conception of dignity, I draw from Jeremy Waldron's insightful analysis of dignity in his book—*Dignity, Rank, and Rights*, in particular the dualistic relationship he envisaged between a general normative status and rights as particular instances to that status is very pertinent to my reconstruction of the status conception of dignity in morality. I believe his legal analysis of dignity shades light on the dual structure of human dignity: dignity engenders norms that establish it as a general normative status, and, at the same time, includes specific norms that protect us from degrading and humiliating treatments that are aptly regarded as paradigmatic violations of human dignity. Waldron argues that dignity "has roots in the thick reality of historically existing schemes of rank and nobility."¹⁴ He underscores that the account of dignity that he offers is not inconsistent with human dignity's egalitarian base, arguing that "the notion of *human* dignity involves an upwards equalization of rank, so that we now try to accord to every human being something of the

¹² Ronald Dworkin, *Justice For Hedgehogs*, (Oxford: Oxford University Press, 2011), 205

¹³ Stephen Darwall, *The Second-Person Standpoint: Morality, Respect and Accountability* (Cambridge, M.A.: Harvard University Press, 2006), 244

¹⁴ Jeremy Waldron "Dignity and Rank" *European Journal of Sociology* Vol. 48, Issue 2 (August 2007): 201-237, 230

dignity, rank and expectation of respect that was formerly accorded to nobility."¹⁵ However, I do not think his is the correct view. I disagree with him with respect to his conviction that the historical evolution of dignity as rank confers the normative foundation for its current use. To the contrary, I believe human dignity accords all human beings basic respect and difference even in the state of nature. I, therefore, think he is mistaken in privileging law over morality as to the issue of dignity's natural habitat, and I took issue with him on that score.

In this dissertation, I have only proposed an approach of conceptualizing human dignity in a moral theory that positions the concept of rights at its normative core. But pretty little has been said about the politics of identifying the principles of justice consistent with our conception of human dignity. I agree with Dworkin that "[w]e must develop our conception of what dignity requires further than we yet have, so that we can identify a politics that is consistent with it."¹⁶ A politics based on status differences, or that mainstreams tribal obligations, or one which asserts that racial, ethnic, religious or linguistic connections confer the basis for rights and obligations do not pass the litmus test of equal respect and difference that the conception of dignity as moral status has set in place. To the very least, nothing in my defense of human dignity as moral status lends them any moral support.

Without respect for dignity humanity will go awry, and a politics that does not recognize and mainstream the dignity of persons is bound to cause any society lose one of its saving graces.

¹⁵ Jeremy Waldron *Dignity, Rank and Rights* Meir Dan-Cohen trans. (Oxford: Oxford University Press, 2012), 33

¹⁶ Ronald Dworkin, *Justice for Hedgehogs*, 320

Bibliography

- Anderson, Elizabeth “Emotions in Kant’s Later Philosophy: Honour and The Phenomenology of Moral Value“ in Monika Betzler (ed.) *Kant’s Ethics of Virtue* (Berlin: de Gruyter, 2008): 123–145
- Bayertz, Kurt (ed.) *Sanctity of Life and Human Dignity*(Dordrecht: Kluwer Academic Publishers 1996)
- “Human Dignity: Philosophical Origin and Scientific Erosion of an Idea”, in Bayertz *Sanctity of life and human dignity*, Dordrecht: Kluwer Academic Publishers 1996: 73-90.
- Beitz, Charles *The Idea of Human Rights* (Oxford: Oxford University Press, 2009)
- Bentham, Jeremy *An Introduction to the Principles of Morals and Legislation*, Edited by J.H. Burns and H.L.A. Hart (Oxford: Clarendon Press, 1996)
- Birnbacher, Dieter "Ambiguities in the Concept of Menschenwürde" in K. Bayertz (ed.), *Sanctity of Life and Human Dignity* (Dordrecht: Kluwer Academic Publishers, 1996): 107-121
- "Human Cloning and Human Dignity" *Ethics, Law and Moral Philosophy of Reproductive Biomedicine*, Vol. 1, No. 1(March 2005): 50-55
- Bradley, Ben “Two concepts of intrinsic value” *Ethical Theory and Moral Practice*, 9 (2009): 111-130.
- Buchanan, Allen “Moral Status and Human Enhancement”, *Philosophy & Public Affairs* 37: 4 (2009) : 346-381
- Campbell, Tom *Rights: A Critical Introduction* (London: Routledge, 2006)
- Cruft, Rowan: "Rights: Beyond Interest Theory and Will Theory?" *Law and Philosophy* 23:4 (2004): 347-397.
- Christiano, Thomas “Two Conceptions of The Dignity of Persons” in *Jahrbuch für Recht und Ethik [Annual Review of Law and Ethics]* (Berlin: Verlag Duncker and Humbolt, 2008): 101-26
- Dan-Cohen, Meir “A Concept of Dignity” *Israel Law Review*, 44: 1-2 (Jan. 2011): 9-23
- Darwall, Stephen: “Two Kinds of Respect”, *Ethics* 88:1 (1977): 36-49.
- “Respect and the Second-Person Standpoint”, in: *Proceedings and Addresses of the American Philosophical Association*, 78:2 (2004): 43-59.

- *The Second Person Standpoint: Morality, Respect and Accountability* (Cambridge, M.A.: Harvard University Press, 2006)
- "Bipolar Obligation" in *Oxford Studies in Metaethics* V.7 (Oxford: Oxford University Press, 2012): 333-367
- DeGrazia, David "Moral Status As a Matter of Degree?" *The Southern Journal of Philosophy* 46 (2008) : 181-198
- Dicke, Klaus "The Founding Function of Human Dignity in the Universal Declaration of Human Rights" in Kretzmer and Klein (eds.), *The Concept of Dignity in Human Rights Discourse* (Kluwer Law International, 2002): 111-118
- Dillon, Robin S. "Respect" in *The Stanford Encyclopedia of Philosophy* (Winter 2009 Edition), ed. by Edward N. Zalta, <http://plato.stanford.edu/archives/win2009/entries/respect/>.
- Douzinas, Costas *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Abingdon, Routledge-Cavendish, 2007)
- Dworkin, Ronald *Taking Rights Seriously: New Impression with a Reply to Critics* (London: Duckworth, 1978)
- "Rights as Trumps" in Waldron, Jeremy (Ed.) *Theories of Rights* (Oxford: Oxford University Press, 1984): 153-167.
- *Justice For Hedgehogs* (Cambridge, M.A.: Harvard University Press, 2011)
- Dwyer, James G. *Moral Status and Human Life: The Case for Children Superiority* (Cambridge: Cambridge University Press, 2011)
- Edmundson, William A. *An Introduction to Rights* (Cambridge: Cambridge University Press, 2004)
- Feinberg, Joel *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973).
- *Rights, Justice and the Bounds of Liberty: Essays in Social Philosophy* (Princeton, N.J.: Princeton University Press, 1980)
- "The Nature and Value of Rights" *Journal of Value Inquiry* 4 (1970): 263-267 (reprinted in Feinberg 1980: 143-157)
- "Voluntary Euthanasia and the Inalienable Right to Life" *Philosophy and Public Affairs* 7:2 (1978): 93-123. (Reprinted in Feinberg 1980: 221-251)
- *The Moral Limits of the Criminal Law: (Vol. One) Harm to Others; and (Vol. Four) Harmless Wrongdoing* (Oxford: Oxford University Press, 1987, 1988 respectively)
- Finnis, John *Natural Law and Natural Rights* (Oxford: Clarendon Press 1980)

- Frankena, William K. "The Ethics of Respect for Persons" *Philosophical Topics* 14:2 (1986): 149-167.
- Frankfurt, Harry "Equality and Respect", in Frankfurt, H. *Necessity, Volition, and Love* (Cambridge: Cambridge University Press, 1999): 146-154.
- "Reply to Joseph Raz" in Buss, Sarah and Overton, Lee (Eds.) *Contours of Agency. Essays on Themes from Harry Frankfurt* (Cambridge. M.A.: MIT press 2002): 316-320
- Garthoff, John "Mimicking Korsgaard" in Pablo Muchnik (ed.) *Rethinking Kant: Volume 2* (Cambridge: Cambridge Scholars Publishing, 2010): 122-155
- Gewirth, Alan *Reason and Morality* (Chicago: University of Chicago Press, 1981)
- "The Epistemology of Human Rights" *Social Philosophy & Policy* 1:2 (spring 1984): 1-24
- "Are There Any Absolute Rights?" *The Philosophical Quarterly* 31: 122 (1981): 1-16.
- "Why Rights are Indispensable" *Mind* 95: 379 (1986): 329-344.
- "Rights and Duties" *Mind* 97:387 (1988): 441-445.
- "Human Dignity as the Basis of Rights" in Michael J. Meyer and William A. Parent (eds.) *The Constitution of Rights: Human Dignity and American Values* (Ithaca and London: Cornell University Press, 1992): 10-28
- Glover, Jonathan *Humanity: A Moral history of the Twentieth Century* (New Haven: Yale University Press, 2000)
- Gorman, Jonathan *Rights and Reason: An Introduction to the Philosophy of Rights* (Chesham: Acumen, 2003)
- Griffin, James *On Human Rights* (Oxford: Oxford University Press, 2008)
- Habermas, Jürgen "The Concept of Human Dignity and the Realistic Utopia of Human Rights" *Metaphilosophy*, 41:4 (July 2010), 464-480
- Hart, Herbert L.A. "Are there any natural rights?" *The Philosophical Review* 64:2 (1955): 175-191. (Reprinted in Waldron 1984: 77-90)
- *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford: Clarendon Press 1982)
- "Legal Rights" in Simpson, Alfred W.B. (Ed.) *Oxford Essays in Jurisprudence: Second Series* (Oxford: Clarendon Press, 1973): 171-201
- Hill Jr., Thomas E. "Servility and Self-Respect" *Monist* 57 (1973): 87-104

- "Humanity as an End in Itself" *Ethics* 91:1, pp. 84-99
- "Dignity and Practical Reason in Kant's Moral Theory (Ithaca: Cornell University Press, 1992)
- Hoerster, Norbert *Ethik des Embryonenschutzes: Ein rechtsphilosophischer Essay* (Stuttgart: Philipp Reclam, 2002)
- Hohfeld, Wesley N. *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed. by D. Campbell and P. Thomas with an Introduction by N. E. Simmonds (Aldershot: Ashgate, 2001)
- Jahanbegloo, Ramin *Conversations with Isaiah Berlin* (London, 2000)
- Kamm, Frances M. *Intricate Ethics: Rights, Responsibilities, and Permissible Harm* (Oxford: Oxford University Press, 2007)
- Kant, Immanuel *Die Metaphysik der Sitten*, in Kant, *Gesammelte Schriften*, hg. von der Preussischen Akademie der Wissenschaften (Berlin: Georg Reimer 1900ff, Bd. VI, 203-493)
- Kateb, George *Human Dignity* (Cambridge, M.A.: Harvard University Press, 2011)
- Kelsen, Hans *Pure Theory of Law*, translated by Max Knight (Berkeley: University of California Press, 1967)
- Kirchhoffer, David G. *Human dignity in Contemporary Ethics* (New York: Teneo Press, 2013)
- Kohen, Ari "The Possibility of Secular Human Rights: Alan Gewirth and the Principle of Generic Consistency" *Human Rights Review* 7:1 (October 2005): 49-75
- Kolnai, Aurel "Dignity" in Dillon, Robin S. (Ed.): *Dignity, Character, and Self-respect*, with an Introduction by Robin S. Dillon (New York: Routledge, 1995): 53-75
- Kommers, Donald P. "Autonomy, Dignity and Abortion" in Tom Ginsberg and Rosalind Dixon (eds.), *Comparative Constitutional Law* (Edward Elgar Publishing, 2011)
- Korsgaard, Christine M. "Two Distinctions in Goodness" *The Philosophical Review*, 92: 2 (April 1983): 169-195
- "The Sources of Normativity" (Cambridge: Cambridge University Press, 1996)
- "Kant's Formula of Humanity" in *Creating The Kingdom of Ends* (Cambridge: Cambridge University Press, 1996)
- Kramer, Matthew H.; H. Simmonds ; Steiner, Hillel A *Debate over Rights. Philosophical Enquiries* (Oxford: Oxford University Press 1998)

- Kramer, Matthew H. "Rights Without Trimmings" in Kramer, Simmonds and Steiner(edn.) 1998: 7-111
- "Getting Rights Right," in Kramer, Mathew (Ed.) *Rights, Wrongs, and Responsibilities* (Basingstoke: Palgrave, 2001): 28-95
- Kramer, Matthew H. and Steiner, Hillel "Theories of Rights: Is There a Third Way?" *Oxford Journal of Legal Studies* 27: 2 (2007): 281-310
- Kraynak, Robert P. and Tinder, Glenn (eds.) *In Defense of Human Dignity: Essays for Our Times* (Notre Dame: University of Notre Dame Press, 2003)
- MacCormick, Neil "Rights in Legislation" in Hacker, P. M. S. and Raz, Joseph (Edn.) *Law, Morality, and Society. Essays in Honour of H. L. A. Hart* (Oxford: Clarendon Press, 1977): 189-209
- Macklin, Ruth "Dignity is a Useless Concept", *British Medical Journal* 237 (20 Dec., 2003): 1419-20
- Mahlmann, Mathias "Six Antidotes to Dignity Fatigue in Ethics and Law" in McCrudden, C.(ed.) *Understanding Human Dignity. Proceedings of The British Academy* 192 (Oxford: Oxford University Press, 2013) 593-614
- Margalit, Avishai *The Decent Society* (Cambridge, M.A: Harvard University Press, 1996)
- Maritain, Jacques *The Rights of Man and Natural Law*, trans. D. Ansem (New York: Charles Scribner's Sons, 1951)
- McCrudden, Christopher "In Pursuit of Human Dignity: An Introduction to Current Debates" in McCrudden, C. (ed.) *Understanding Human Dignity. Proceedings of The British Academy* 192 (Oxford: Oxford University Press, 2013)
- Melden, A. I. *Rights and Persons* (Berkeley: University of California Press, 1977)
- Meyer, Michael J. "Dignity, Rights and Self-Control" *Ethics* 99:3 (April 1989): 520-534
- "Dignity, Death and Modern Virtue" *American Philosophical Quarterly* 32:1 (1995): 45-55
- Meyer , Michael J. and Parent, William A. (eds.) *The Constitution of Rights: Human Dignity and American Values* (Ithaca and London: Cornell University Press, 1992)
- Miller, David *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007)
- Morris, Christopher W. "The Idea of Moral Standing" in Tom L. Beauchamp and R. G. Frey (Eds.) *The Oxford Handbook of Animal Ethics* (Oxford: Oxford University Press, 2011)
- Nagel, T. *The Possibility of Altruism* (Princeton: Princeton University Press, 1978)

- "Personal Rights and Public Space" *Philosophy & Public Affairs* 24: 2 (1995): 83-107
- Nickel, James W. "Recent Work on the Concept of Rights" in C.L. Ten (edn.) *Theories of Rights* (Aldershot: Ashgate Publishers, 2006)
- Nozick, R. *The Nature of Rationality* (Princeton: Princeton University Press, 1993)
- Nussbaum, Martha "Capabilities and Human Rights", in: De Greiff, Pablo & Cronin, Ciaran (Ed.) *Global Justice and transnational politics: Essays on the moral and political challenges of globalization* (Cambridge, M.A: MIT Press, 2002): 117-149.
- Nussbaum, Martha *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, M.A: Belknap Press of Harvard University Press, 2006)
- O'Neill, O. *Constructions of Reason* (Cambridge: Cambridge University Press, 1989)
- Parekh, Bhikhu "Logic of Humiliation" in Gopal Guru (ed.) *Humiliation: Claim and Context* (Oxford: Oxford University Press, 2009)
- Pinker, Steven "The Stupidity of Dignity", *The New Republic* (28 May, 2008)
- Rashdall, Hastings *A Theory of Good and Evil: A Treatise on Moral Philosophy*, 2nd Edition (Oxford: Oxford University Press, 1924)
- John Rawls, *Political Liberalism* (New York: Colombia University Press, 1993)
- *The Law of Peoples: With, The Idea of Public Reason Revisited* (Cambridge, M.A.: Harvard University Press, 2001)
- Raz, Joseph "Rights and Individual Well-Being" *Ratio Juris.: An International Journal of Jurisprudence and Philosophy of Law* 5: 2 (1992): 127-142
- *Engaging Reason: On the Theory of Value and Action* (Oxford: Oxford University Press, 2000); *Value, Respect and Attachment* (Cambridge: Cambridge University Press, 2001)
- "Human Rights Without Foundations," in Samantha Besson and John Tasioulas (eds.) *The Philosophy of International Law* (Oxford: Oxford University Press, 2010)
- *From Normativity to Responsibility* (Oxford: Oxford University Press, 2011)
- Rosen, Michael *Dignity: Its History and Meaning* (Cambridge, M.A.: Harvard University Press, 2012)
- Sachs, Benjamin "The Status of Moral Status", *Pacific Philosophical Quarterly* 91 (2011): 87- 104

- Schaber, Peter "Human Dignity, Self-Respect, and Dependency" in Paulus Kaufmann et. al. (eds.) *Humiliation, Degradation and Dehumanization: Human Dignity Violated* (Dordrecht: Springer, 2011): 151-158
- "Human Rights and Human Dignity: A reply to Doris Schroeder" *Ethical Theory and Moral Practice* 17:1 (Feb. 2014) : 155-161
- Schachter, Oscar "Human Dignity as a Normative Concept" *The American Journal of the International Law* Vol. 77, No. 4 (Oct., 1983) pp. 848-854
- Schroeder, Doris "Human Rights and Human Dignity: An Appeal to Separate the Conjoined Twins" *Ethical Theory and Moral Practice*, Vol. 15 (2012): 323-335
- Sensen, Oliver *Kant on Human Dignity* (Berlin: De Gruyter, 2011)
- Siegel, Reva B. "The Constitutionalization of Abortion" in Michel Rosenfeld and Andras Sajó (eds.) *The Oxford Handbook of Comparative Constitutional Law* (Oxford: Oxford University Press, 2012): 1057-1078
- Simmons, A. John "Human Rights, Natural Rights and Human Dignity" in Rowan Cruft, et.al (eds.) *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015):138-152
- Statman, Daniel "Humiliation, dignity and self-respect" *Philosophical Psychology* 13: 4 pp. 523-540
- Steinbock, Bonnie *Life Before Death: the Moral and Legal Status of Embryos and Fetuses* (New York: Oxford University Press, 1982)
- "Speciesism and the Idea of Equality" *Philosophy* 53: 204, pp. 247-256
- Steiner, Hillel "Are There Still Any Natural Rights?" in Kramer, Matthew H. et. al. (Ed.) *The Legacy of H.L.A. Hart: Legal, Political, and Moral Philosophy* (Oxford: Oxford University Press, 2008): 239-250
- Sumner, L. W. *Abortion and Moral Theory* (Princeton, N.J.: Princeton University Press, 1981)
- *The Moral Foundation of Rights* (Oxford: Clarendon Press, 1987)
- Tasioulas, John "On the Foundations of Human Rights" in Rowan Cruft et.al (eds.) *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015)
- Thomson, Judith Jarvis "A Defense of Abortion" *Philosophy and Public Affairs* 1:1 (1971): 47- 66
- *Rights, Restitution, and Risk: Essays in Moral Theory*, ed. by William Parent, (Cambridge, M.A: Harvard University Press, 1986)
- *The Realm of Rights* (Cambridge, M.A.: Harvard University Press, 1990)

- Toscano, Manuel "Human Dignity as High Moral Status" *The Ethics Forum* 6: 2 (2011): 4-25
- Velleman, David J. "A Right of Self-Termination?" *Ethics* 109:3 (1999): 606-628
- Vlastos, Gregory "Justice and Equality" in Boulding, Kenneth E. et. al. *Social Justice* ed. by Richard B. Brandt (Englewood Cliffs, N.J.: Prentice-Hall, 1962): 31-72
- Jeremy Waldron "Dignity and Rank" *European Journal of Sociology* Vol. 48, Issue 2 (August 2007): 201-237
- "Cruel, Inhuman and Degrading Treatment: The Words Themselves" *Public Law and Legal Theory Research Paper Series*, Working Paper No. 08-38 (2008)
- "Does 'Equal Moral Status' Add Anything to Right Reason?" New York University, School of Law, *Public Law & Legal Theory Research Paper Series*; Working Paper No. 11-52 (Aug. 2011)
- "How Law protects Dignity" *Public Law & Legal Theory Research Paper Series*: (December 2011) Working Paper No. 11-83
- *Dignity, Rank and Rights*. Meir Dan-Cohen (ed) (Oxford: Oxford University Press, 2012)
- "What do the Philosophers Have against Dignity?" (2014). *New York University Public Law and Legal Theory Working Papers*. Paper 496
- "Is Dignity the Foundation of Human Rights?" in Rowan Cruft, et.al (eds.) *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015)
- Warren, Mary Anne *Moral Status: Obligations to Persons and Other Living Things* (Oxford: Clarendon Press, 1997);
- "On the Moral and Legal Status of Abortion" *The Monist* 57: 4, pp. 43-61
- Wellman, Carl *An Approach to Rights: Studies in the Philosophy of Law and Morals* (Dordrecht: Kluwer Academic Publishers, 1997)
- *The Moral Dimensions of Human Rights* (Oxford: Oxford University Press, 2011)
- Wenar, Leif The Nature of Claim-Rights. *Ethics*, 123: 2 *Symposium on Rights and the Direction of Duties* (January 2013): 202-229
- Williams, Bernard "The Idea of Equality" in Joel Feinberg (ed.) *Moral Concepts* (Oxford: Oxford University Press, 1970): 153-171